S279622

No. S279622

In the Supreme Court of the State of California

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

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

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

ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

On July 12, 2023, the Court ordered the parties to address the following question: "Does Business and Professions Code section 7451, which was enacted by Proposition 22 (the 'Protect App-Based Drivers and Services Act'), conflict with article XIV, section 4 of the California Constitution and therefore require that Proposition 22, by its own terms, be deemed invalid in its entirety?"

INTRODUCTION

In adopting Proposition 22, the voters established a new worker-classification standard for individuals who drive for network companies that offer rideshare or delivery services through online platforms or applications ("apps"). Business and Professions Code section 7451, the central provision enacted by Proposition 22, provides that network companies may classify their drivers as "independent contractors" instead of "employees" if certain criteria are satisfied.[1] As a consequence, app-based drivers are generally no longer entitled to receive the protections and benefits guaranteed to employees under California law—including, but not limited to, workers' compensation coverage. In lieu of those protections, Proposition 22 provides several alternative benefits, including a healthcare subsidy and a form of private accident insurance.

Plaintiffs ask the Court to strike down Proposition 22 in its entirety. While plaintiffs do not dispute that the vast majority of

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[1] Unless otherwise noted, all further statutory references are to the Business and Professions Code.

the initiative's applications are valid, they argue that a single application—the denial of workers' compensation coverage to app-based drivers as a result of section 7451—violates article XIV, section 4 of the Constitution. Under Proposition 22's severability provision, plaintiffs contend, just one invalid application of section 7451 is enough to render the entire initiative invalid.

The Court should reject that far-reaching request for relief. The Court of Appeal below struck down certain provisions of Proposition 22 (on grounds that are not challenged here) and future challenges to other aspects of Proposition 22 might present constitutional problems requiring as-applied relief. But plaintiffs identify no constitutional defect in the lone provision at issue before this Court—section 7451—or any other basis for striking down Proposition 22 in its entirety. In our constitutional system, the electorate has broad power to enact legislation by initiative on virtually any subject, including workers' compensation. Nothing in article XIV, section 4 provides otherwise. While section 4 grants the Legislature "plenary power, unlimited by any provision of [the] Constitution," to create and enforce a complete system of workers' compensation, this Court has properly recognized that a grant of "plenary" power does not make the Legislature's power *exclusive*.

Plaintiffs argue that section 7451 unconstitutionally stripped the Legislature of future authority to specify that app-based drivers are entitled to workers' compensation coverage. In making that argument, however, plaintiffs do not actually point

to anything in section 7451. They instead rely on *other* provisions of law—in particular, a separate provision of Proposition 22 (section 7465), as well as article II, section 10, subdivision (c) ("section 10(c)") of the Constitution. But the issue here as expressly framed by this Court is whether *section 7451* conflicts with article XIV, section 4. Any conflict involving other statutory or constitutional provisions should be addressed (if necessary) in a future case.

And even if the Court were inclined to address such a conflict here, there would be no basis for the broad relief that plaintiffs seek. If plaintiffs are correct that article XIV, section 4 requires that the Legislature have authority to provide app-based drivers with workers' compensation coverage through its normal process for enacting statutes, then the appropriate remedy would be an order declaring that neither section 7465 nor article II, section 10(c) would prevent the Legislature from doing so. Plaintiffs provide no reason to invalidate section 7451 or Proposition 22 in its entirety.

LEGAL AND HISTORICAL BACKGROUND

A. Progressive Era expansions of voter power and legislative authority

The "progressive movement . . . gained control of the California Legislature and the governorship" in 1910 and promptly instituted a far-reaching "reform program." (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1038.) One of the "outstanding achievements of the progressive movement" was the "amendment of the California Constitution in 1911 to provide for the initiative and

referendum." (*Id.* at p. 1032, quoting *Associated Home Builders etc., 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 people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them." (*Ibid.*)

Today, the Constitution continues to empower the electorate to exercise broad powers of initiative. Article IV, section 1 provides that "the California Legislature" and "the people" share "[t]he legislative power of [the] State." Article II, section 8 authorizes the electors to enact initiatives on virtually any subject matter. (See *Rossi v. Brown* (1995) 9 Cal.4th 688, 699, fn. 6; *Strauss v. Horton* (2009) 46 Cal.4th 364, 456 ["no subject-matter limitation on the initiative process"].) And under article II, section 10(c), the Legislature may generally amend initiatives only if the voters approve the amendment or if the initiative "permits amendment or repeal without the electors' approval."

"In addition to the provisions relating to the initiative [and] referendum," the 1911 ballot "contained significant measures relating, among other subjects, to women's suffrage, civil service, [and] workers' compensation." (*McPherson*, *supra*, 38 Cal.4th at p. 1041, fn. 7.) As relevant here, the voters approved an amendment providing that "[t]he Legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment irrespective of the fault of either party." (Sen. Const. Amend. No.

32, Stats. 1911, res. ch. 66, pp. 2179-2180.) At the time, there was an "appallingly high industrial accident rate among American workers." (Salyer, *Protective Labor Legislation and the California Supreme Court* (1998-1999) 4 Cal. S.Ct. Hist. Society Yearbook 1, 2.) The "legal system offered little relief" because the "common-law . . . often shielded employers from liability." (*Ibid.*)

Progressive leaders saw a workers' compensation system as the solution. (See, e.g., Shor, *The Evolution of Workers' Compensation Policy in California* (2021) 16 Cal. Legal History 37, 54-70.)[2] Workers' compensation "is a comprehensive statutory scheme through which employees may receive prompt compensation for costs related to injuries incurred in the course and scope of their employment." (*Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal.5th 993, 1005.) It "is framed upon the theory that, regardless of blame," injuries are "a cost of production that must be carried over to the consumer, and therefore, you do not seek to find who is responsible, legally or morally, for the accident, but as a matter of course, when a man is injured, he becomes entitled to compensation and payment for his injury." (Hichborn, Story of the Session of the California Legislature of 1911 (1911) p. 239, fn. 271 (remarks of Sen. Louis H. Roseberry).)

In 1918, the Legislature proposed—and the voters approved—a constitutional amendment defining in more expansive terms the Legislature's power with regard to workers'

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[2] Available at <https://www.cschs.org/wp-content/uploads/2021/09/Legal-Hist.-v.-16-2021.pdf> (as of Dec. 11, 2023).

compensation. (Sen. Const. Amend. No. 30, Stats. 1917, res. ch. 60, p. 1953.) Proponents of the new amendment explained that the 1911-enacted amendment "contain[ed] only meager and indefinite authority for administration" of the workers' compensation system. (4 AA 796 (ballot statement of Sen. Luce).) They also wished to place the system on a "firm constitutional basis, beyond the possibility of being attacked on technical grounds or by reason of any questioned want of constitutional authority." (4 AA 796 (ballot statement of Sen. Jones).)[3]

The resulting constitutional provision, which now appears in article XIV, section 4, establishes that "[t]he Legislature is . . . vested with plenary power, unlimited by any provision of [the] Constitution, to create, and enforce a complete system of workers' compensation"; "to create and enforce a liability" related to workers' compensation; and to "establish[] and manage[] . . . a State compensation insurance fund." It defines a "complete system of workers' compensation" to include (among other things) "adequate provisions for the comfort, health and safety and general welfare of any and all workers"; "full provision for securing safety in places of employment"; and "full provision for

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[3] In the years leading up to the 1918 amendment, this Court had considered several constitutional challenges to the State's early workers' compensation laws. While the Court rejected those challenges, it was "far from unanimous" in doing so. (Salyer, *supra*, at p. 5; see *id.* at pp. 4-9; see, e.g., *Western Indem. Co. v. Pillsbury* (1915) 170 Cal. 686, 696; *id.* at p. 716 (dis. opn. of Henshaw, J.); *id.* at pp. 731-736 (Shaw, J., dubitante on denial of rehearing); *Western Metal Supply Co. v. Pillsbury* (1916) 172 Cal. 407, 414-415; *id.* at p. 426 (dis. opn. of Henshaw, J).)

such medical, surgical, hospital and other remedial treatment as is requisite" to address workplace injuries.

Consistent with that broad grant of authority, the Legislature has "regularly amended" the State's workers' compensation laws over the past 100 years—both to expand and contract the scope of coverage. (Hanna, Cal. Law of Employee Injuries and Workers' Compensation (Lexis online version, rev. 2023) § 1.01[e].) For example, the Legislature recently created a presumption of coverage for employees who have been "diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment." (Lab. Code, § 3212.86, subd. (b); see *id.*, subd. (e); Stats. 2020, ch. 85, § 2, pp. 2061-2062.) And in 1989, the Legislature "establish[ed] a new and higher threshold of compensability for psychiatric injur[ies]." (Lab. Code, § 3208.3, subd. (c); see Stats. 1989, ch. 892, § 25, p. 3003.) There are many similar examples.[4]

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[4] See, e.g., Stats. 2019, ch. 390, § 2, pp. 3573-3574 (expanding coverage for post-traumatic stress disorder-related injuries suffered by firefighters and peace officers); Stats. 2017, ch. 770, §§ 3-4, pp. 5828-5833 (defining classes of workers excluded from coverage); Stats. 2012, ch. 363, §§ 45-46, pp. 3760-3764 (providing for independent medical review); Stats. 2004, ch. 92, § 1, pp. 488-490 (addressing calculation of death benefits in cases of total dependency); Stats. 1999, ch. 358, §§ 2-4, pp. 2594-2595 (addressing death benefits related to HIV infections sustained in the workplace).

B. Employment classification under California law

The distinction between "employees" and "independent contractors" has "considerable significance for workers, businesses, and the public generally." (*Dynamex Operations West v. Superior Court* (2018) 4 Cal.5th 903, 912.) The distinction arose from the common law of torts as a mechanism to determine vicarious liability for the misconduct of a person rendering services to another person or entity. (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350.) Over the course of the 20th century, the Legislature incorporated the distinction into numerous labor and employment statutes. (*Ibid.*) Today, classification as an "employee" entitles a worker not only to workers' compensation coverage (see, e.g., Lab. Code, §§ 3351, 3600), but also to unemployment insurance, a minimum wage, overtime compensation, and paid sick leave, among other benefits and protections (see Stats. 2019, ch. 296, § 1, p. 2890).

In *Borello*, *supra*, 48 Cal.3d at pp. 351-355, the Court adopted a multi-factor balancing test for purposes of distinguishing between "employees" and "independent contractors" under the workers' compensation regime. Decades later, the Court reexamined *Borello* in the context of certain orders (called "wage orders") that impose obligations relating to "minimum wages, maximum hours, and . . . [certain] working conditions." (*Dynamex*, *supra*, 4 Cal.5th at pp. 913-914.) In the Court's view, *Borello*'s multi-factor standard had proven to be "complex and manipulable," thereby "afford[ing] a hiring business [the] opportunity" to misclassify workers. (*Id.* at p. 955.) The Court thus adopted a "simpler, more structured" test—the

"ABC" test (*ibid.*)—which allows an employer to classify a worker as an independent contractor only if it establishes that the worker: (A) "is free from the [hiring party's] control"; (B) "performs work that is outside the usual course" of that party's business; and (C) "is customarily engaged in an independently established trade, occupation, or business." (*Id.* at p. 957.)

The Legislature codified *Dynamex* with respect to wage orders when it enacted AB 5 in 2019. (Stats. 2019, ch. 296, § 2, p. 2890.) AB 5 also extended the ABC test to the range of worker benefits and protections provided by the Labor and Unemployment Insurance Codes, including (but far from limited to) workers' compensation. (See *ibid.*; Lab. Code, § 2775.) And it adopted a series of exemptions to ensure that application of the ABC test would not disrupt settled expectations for workers who have historically—and lawfully—been classified as independent contractors. (See, e.g., *American Society of Journalists & Authors, Inc. v. Bonta* (9th Cir. 2021) 15 F.4th 954, 965; Sen. Com. on Labor, Public Employment, and Retirement, Analysis of Assem. Bill No. 5 (2019-2020 Reg. Sess.) July 8, 2019, pp. 5-8.)

C. Classification of "app-based" drivers and Proposition 22

Transportation and delivery services have changed dramatically in recent years with the rise of "[t]he so-called 'gig' or 'platform' economy." (Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work* (2019) 39 N. Ill. U. L.Rev. 379, 381.) "Uber and Lyft," for example, "offer mobile phone applications (apps) that operate by matching those in need of a ride to ride-hailing drivers available

to give them rides using their own vehicles." (*People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 278.) Other platforms—such as Postmates, Grubhub, and Doordash—provide app-based delivery of food, groceries, or other goods. (Note, *From Food on a Platter to Food on the Platform* (2023) 7 Geo. L. Tech. Rev. 133, 139-140.)

Many labor experts and policymakers have criticized app-based platforms for misclassifying their workers as independent contractors. (See, e.g., Cunningham-Parmeter, *From Amazon to Uber: Defining Employment in the Modern Economy* (2016) 96 B.U. L.Rev. 1673, 1686-1688.) As one court explained, drivers for app-based businesses often "look[] very much like" workers traditionally classified as employees: ride-hailing drivers, for example, "use no special skill[s]" analogous to those of workers traditionally classified as independent contractors; drivers' "work is central, not tangential, to [the app company's] business"; and ride-hailing companies have "a great deal of power over how [drivers] actually do their work." (*Cotter v. Lyft, Inc.* (N.D. Cal. 2015) 60 F.Supp.3d 1067, 1069; see *Berwick v. Uber Technologies, Inc.* (Cal. Lab. Com. 2015) 2015 WL 4153765, *5-6.)

After the enactment of AB 5, it became clear that most drivers for app-based platforms would be classified as employees, not independent contractors. In response, a "group called Protect App-Based Drivers and Services" proposed Proposition 22, a statutory initiative designed to substitute a new employment classification standard for app-based drivers. (Opn. 3.) The main backers of the effort were Uber, Lyft, Doordash, Instacart, and

Postmates. (Pyers & Steele, *The Future of Ridesharing*, American Bar Assn: The Brief (Aug. 25, 2021) <https://tinyurl.com/mr2tcph7> [as of Dec. 11, 2023].) In November 2020, the voters approved Proposition 22 by a margin of 58.6 to 41.4 percent. (Opn. 7.)

Proposition 22's central provision is Business and Professions Code section 7451. It establishes that app-based drivers should be classified as "independent contractor[s] and not . . . employee[s]" for purposes of the Labor and Unemployment Insurance Codes so long as certain criteria are satisfied.[5] As result, app-based drivers are now generally excluded from the provisions of the Labor and Unemployment Insurance Codes that provide the "standard job benefits and protections" discussed above. (Ballot Pamp., Gen. Elec. (Nov. 3, 2020) analysis of Prop. 22, p. 56; see *ante*, p. 17.) But Proposition 22 does provide certain other benefits to app-based drivers, including "a health care subsidy for drivers meeting certain minimum requirements for hours spent providing services"; "a minimum earnings guarantee based on time spent providing

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[5] App-based drivers are classified as independent contractors if the network company for which they provide services (A) "does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the . . . application or platform"; (B) "does not require the app-based driver to accept any specific rideshare service or delivery service request"; (C) "does not restrict the app-based driver from performing rideshare services or delivery services through other network companies"; and (D) "does not restrict the app-based driver from working in any other lawful occupation or business." (§ 7451.)

services"; and a form of "occupational accident insurance" designed as a partial substitute for workers' compensation. (Opn. 5; see §§ 7454-7455.)

A separate provision of Proposition 22 states that the Legislature may amend the initiative only by a "seven-eighths" vote, and only if the amendment "is consistent with, and furthers the purpose of," Proposition 22. (§ 7465, subd. (a).) The stated purpose of Proposition 22 is to "protect the basic legal right of Californians to choose to work as independent contractors with rideshare and delivery network companies." (§ 7450, subd. (a).) The initiative directs that "[a]ny statute that amends [s]ection 7451 does not further [that] purpose[]." (§ 7465, subd. (c)(2).)

The provisions of Proposition 22 are generally severable in the event that "any portion, section, . . . or application . . . is for any reason held to be invalid[.]" (§ 7467, subd. (a).) But section 7451 is an exception. If any portion or application of section 7451 is held invalid, "no provision of [Proposition 22] shall be deemed valid or given force of law." (§ 7467, subd. (b).)

STATEMENT OF THE CASE

Plaintiffs are the Service Employees International Union (SEIU), the California State Council of the SEIU, and several individual app-based drivers who wish to be treated as employees for purposes of California labor law. (1 AA 19-20.) Following Proposition 22's enactment, they sought writ relief in the Superior Court of Alameda County. (1 AA 29.) As relevant here, plaintiffs argued that section 7451 violates article XIV, section 4 by restricting the Legislature's ability to enact "statutes

delineating which workers are employees covered by the complete system of workers' compensation." (1 AA 26.) Because the "severability clause contained in [Proposition 22]" makes clear that any invalid applications of section 7451 are not severable (*ibid.*), plaintiffs asked the court to strike down "the entirety of Proposition 22" (1 AA 27). Plaintiffs also raised additional claims not at issue here, including a separation-of-powers challenge to certain aspects of section 7465 (the provision restricting the Legislature's authority to amend the initiative). (1 AA 27-28.) Several proponents of Proposition 22 intervened in support of the initiative. (1 AA 197, 201-202.)

Agreeing with plaintiffs, the superior court prohibited the enforcement of "any provisions of Proposition 22." (4 AA 899.) The court emphasized that article XIV, section 4 gives the Legislature "plenary power, unlimited by any provision of [the] Constitution" to enact and administer a workers' compensation system. (4 AA 887.) While the court acknowledged that the Legislature's authority over the workers' compensation system is not exclusive (see 4 AA 888), it held that section 7451 has the impermissible effect of "limit[ing] the power of a future legislature to define app-based drivers as workers subject to workers' compensation law" (4 AA 896). Under article II, section 10(c), the court reasoned, "the Legislature may not act to amend or repeal [section 7451] without a subsequent vote of the people." (4 AA 889.) To free the Legislature to enact such an amendment, the court ordered that section 7451—and Proposition 22 in its entirety—"be stricken." (4 AA 890.) The court also agreed with

plaintiffs' separation-of-powers challenge to aspects of section 7465 not at issue here. (4 AA 894-895, 897.)

The Court of Appeal reversed in relevant part. While all three justices agreed that portions of section 7465 are invalid (opn. 62), the majority rejected plaintiffs' challenge to section 7451 (*id.* at pp. 10-28). According to the majority, article XIV, section 4 neither "give[s] the Legislature exclusive authority over workers' compensation" (*id.* at p. 21), nor "require[s] every worker to be covered by workers' compensation" (*id.* at p. 24). The majority was unconcerned that article II, section 10(c) might bar the Legislature from amending section 7451 without voter approval. (See *id.* at pp. 20-22, 26.) By restricting the Legislature's ability to amend initiatives, the majority explained, section 10(c) helps to "maintain maximum power in the people." (*Id.* at p. 21, internal quotation marks omitted.) Because the invalid aspects of section 7465 could be severed, the majority "allow[ed] the rest of Proposition 22 to remain in effect." (*Id.* at p. 62.) The majority also "express[ed] no view on [other] claims that might be asserted in specific applications of the initiative." (*Id.* at p. 10; see *ibid.* ["We review here a facial challenge"].)

Justice Streeter dissented in relevant part. He agreed with the superior court that section 7451 violates article XIV, section 4 by effectively "withdraw[ing] the Legislature's authority to . . . restor[e]" workers' compensation coverage to app-based drivers. (Conc. & dis. opn. 4.) He also reasoned that section 7451 violates certain "substantive limits on *any* exercise of legislative power." (*Ibid.*) On that view, neither the Legislature nor the voters may

"revise the basic outline" of the workers' compensation system as it existed in 1918. (*Id.* at p. 5.)

Plaintiffs petitioned for this Court's review, asking the Court to decide whether "the initiative statute known as Proposition 22 (2020) conflicts with article XIV, section 4 of the California Constitution[.]" (Pet. 8.) After granting review, the Court directed that "[t]he issue to be briefed and argued is limited to the following": Does "section 7451 . . . conflict with article XIV, section 4 . . . and therefore require that Proposition 22, by its own terms, be deemed invalid in its entirety?"

ARGUMENT

I. SECTION 7451 IS A VALID EXERCISE OF THE INITIATIVE POWER

A. The voters may legislate on the subject of workers' compensation

1. The California Constitution expressly recognizes that "[a]ll political power is inherent in the people." (Cal. Const., art. II, § 1.) Our "[g]overnment is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." (*Ibid.*; see generally *Strauss v. Horton* (2009) 46 Cal.4th 364, 413 [describing this "basic precept of our governmental system"].)

The Constitution initially reserved legislative power to the people's representatives in the Legislature. (Cal. Const. of 1849, art. IV, § 1; see *Perry v. Brown* (2011) 52 Cal.4th 1116, 1140.) That changed during the Progressive Era. As discussed above (*ante*, pp. 12-13), the voters "overwhelmingly" approved a 1911 constitutional amendment empowering the people to enact legislation by ballot initiative. (*Independent Energy Producers*

Assn. v. McPherson (2006) 38 Cal.4th 1020, 1042; see Cal. Const. art. II, §§ 8, 10; *id.*, art. IV, § 1.) Consistent with that amendment, the Court has repeatedly upheld initiatives addressing a wide variety of subjects. (See, e.g., *Briggs v. Brown* (2017) 3 Cal.5th 808, 827; *McPherson*, *supra*, 38 Cal.4th at p. 1032; *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249-250; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 262; see generally *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 ["the courts have described the initiative . . . as articulating 'one of the most precious rights of our democratic process'"].)

During that same Progressive Era, the voters amended the Constitution to add what is now article XIV, section 4. As noted, section 4 directs that "[t]he 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[.]" That amendment was approved by the voters in 1918, after a burst of legislative activity between 1911 and 1917 on the subject of workers' compensation. (See *Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 728-731.) Section 4 was intended not only to confirm the Legislature's authority to enact a workers' compensation system with the features on the books in 1918 (see *id.* at pp. 733-735), but also to provide the Legislature with ongoing "authority to determine the contours and content of our state's workers' compensation system" in the future (*Facundo-*

Guerrero v. Workers' Comp. Appeals Bd. (2008) 163 Cal.App.4th 640, 650; see 4 AA 796 (ballot statement of Sen. Luce)).

That ongoing authority is reflected in section 4's text, which speaks prospectively: it authorizes the Legislature "to create, *and enforce* a complete system of workers' compensation"; "to create *and enforce* a liability" related to workers' compensation; and to "establish[] *and manage[]* . . . a State compensation insurance fund." (Italics added.) And many of section 4's specific provisions contemplate the Legislature's ability to recalibrate workers' compensation laws in response to future developments. For instance, the text empowers the Legislature to set "adequate provisions for the comfort, health and safety and general welfare" of workers and their dependents. What is "adequate" may evolve as a result of changes in living conditions. Section 4 also empowers the Legislature to enact "provision[s] for securing safety in places of employment," which may require adjustment to address emerging business activities and new workplace conditions. And it empowers the Legislature to provide "for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of" workplace injuries. As medical science changes over time, so too may the "requisite" treatments.

The Constitution thus prescribes an active and ongoing role for the Legislature in adjusting the provisions of California's workers' compensation statutes. Indeed, this Court and the Courts of Appeal have consistently recognized that the Legislature has broad authority to expand and contract the scope

of the workers' compensation system as it deems appropriate. (See, e.g., *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 59-62; *Mathews*, *supra*, 6 Cal.3d at p. 728; *Subsequent Injuries Fund v. Industrial Acci. Com.* (1952) 39 Cal.2d 83, 87-89; *San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 113-115; *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1093; *Bautista v. State of California* (2011) 201 Cal.App.4th 716, 722.)

2. But the Legislature's authority to legislate on the subject of workers' compensation is not *exclusive*. Each of the parties to this case—and each of the four jurists who considered the case below—agrees that the voters retain the power to enact initiative statutes on this subject. (See, e.g., OBM 40; Interveners' Answer to Pet. 19-20; opn. 21-22; conc. & dis. opn. 31; 4 AA 888.)

Text and precedent establish why that unanimous position is correct. The voters expressly granted "[t]he Legislature . . . plenary power" to create and enforce a workers' compensation system. (Cal. Const., art. XIV, § 4; see also *id.*, art. IV, § 1 [defining "Legislature" to mean "the Senate and Assembly"].) The voters' use of "plenary" underscores that the Legislature's power is "complete" and "unqualified." (*McPherson*, *supra*, 38 Cal.4th at p. 1035, internal quotation marks omitted.)[6] But "plenary" does not mean "exclusive." (See *ibid.*) Under articles II

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[6] See also American Dictionary of the English Language (1910) p. 654 (defining "plenary" as "full," "entire," "complete"); Laird and Lee's Webster's New Standard American Dictionary (1912) p. 840 (same); Webster's Collegiate Dictionary (1916) p. 740 ("full," "entire," "complete," "absolute").

and IV of the Constitution, the electorate's initiative power is generally "*coextensive* with the power of the Legislature" to enact statutes. (*Id.* at p. 1032, internal quotation marks omitted; see Cal. Const., art. II, § 8; *id.*, art. IV, § 1.) Nothing in section 4 overrides that broad grant of power or otherwise prohibits the voters from using their initiative power to enact statutes regarding workers' compensation. Nor does section 4 contain any of the language that constitutional drafters typically use to grant exclusive authority.[7]

As a matter of precedent, moreover, "numerous California decisions . . . 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" cannot "reasonably be interpreted . . . to preclude . . . the right of the people through the initiative process to exercise similar legislative authority" pursuant to articles II and IV. (*McPherson*, *supra*, 38 Cal.4th at p. 1033, discussing, e.g., *Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 249-251; see generally *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 42 ["The people having reserved the legislative power to themselves as well as having granted it to the Legislature, there is no reason to hold that the people's power is more limited than that of the Legislature"].)

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[7] See, e.g., Cal. Const., art. V, § 10 ("The Supreme Court has exclusive jurisdiction to determine all questions arising under this section."); *id.*, art. XX, § 22 (the State "shall have the exclusive right and power to license and regulate . . . alcoholic beverages within the State").

McPherson is a prime example. The constitutional provision at issue in that case—article XII, section 5—states that "[t]he 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" Public Utilities Commission (PUC). In deciding whether section 5 barred a voter initiative to expand the jurisdiction of the Commission, this Court quoted approvingly from precedent "reject[ing] the contention that the term 'plenary power' means exclusive power." (*McPherson*, *supra*, 38 Cal.4th at p. 1035.) Although the text of section 5 was "not unambiguous," the Progressive Era history surrounding its adoption led the Court to "conclude that [section 5] does not preclude the people, through their exercise of the initiative process, from" exercising the same legislative power expressly vested in the Legislature. (*Id.* at pp. 1036, 1043-1044.) It would have been "most improbable" for the same voters who approved "a far-reaching measure incorporating a broad initiative power as part of the California Constitution" to have "intended, without any direct or explicit statement to this effect, to *limit* the use of the initiative power by virtue of the language" in section 5. (*Id.* at p. 1042.)

The Court of Appeal in this case correctly applied that precedent to the "virtually identical language" of article XIV, section 4. (Opn. 20.) As the court recognized, there is "no justification for reaching a different interpretation than [in] *McPherson*." (*Ibid.*) The voters retain the power to enact

initiative statutes on the subject of workers' compensation. (*Id.* at pp. 21-22.)

B. Section 7451 does not violate article XIV, section 4

This Court framed the question presented in this case as follows: "Does Business and Professions Code section 7451, which was enacted by Proposition 22 . . . , conflict with article XIV, section 4 of the California Constitution and therefore require that Proposition 22, by its own terms, be deemed invalid in its entirety?" The answer to that question is no. Nothing in section 7451 conflicts with or violates article XIV, section 4. Plaintiffs' arguments point to novel questions about other aspects of Proposition 22 and our state Constitution that could be the subject of review if presented in a future case (see *post*, pp. 37-46), but plaintiffs do not identify any basis for holding that *section 7451* is unconstitutional.

1. Section 7451 creates a four-part test to determine when "an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company." (See *ante*, p. 20, fn. 5.) Network companies must satisfy all four conditions to classify an app-based driver as an independent contractor. Although section 7451 does not directly address workers' compensation, it does direct that, when all four conditions are satisfied, a driver "is an independent contractor" "[n]otwithstanding any other provision of law, including . . . the Labor Code." The Labor Code contains California's workers' compensation statutes, which provide that independent contractors generally are not eligible for workers'

compensation. (See, e.g., Lab. Code, §§ 3351, 3353, 3600; *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349.) In lieu of providing workers' compensation to app-based drivers, the voters in Proposition 22 enacted another provision—separate from section 7451—that creates a form of "occupational accident insurance" coverage for covered drivers. (See § 7455; *ante*, pp. 20-21.)

Although Section 7451 affects who is entitled to workers' compensation, that does not bring it in conflict with article XIV, section 4. Nothing in section 4 overrides the voters' broad authority under articles II and IV to enact initiatives on any subject matter—including workers' compensation. (See *Rossi v. Brown* (1995) 9 Cal.4th 688, 699, fn. 6; *Strauss*, *supra*, 46 Cal.4th at p. 456 ["no subject-matter limitation on the initiative process"].) The Legislature instead shares with the voters the authority to enact legislation on that subject.

2. Seizing on a single footnote in *McPherson*, plaintiffs contend that the policy change reflected in section 7451 is impermissible. (OBM 24-32.) The Court observed in that footnote that it "ha[d] no occasion in this case to consider whether an initiative measure relating to the PUC may be challenged on the ground that it . . . improperly conflicts with the Legislature's exercise of *its* authority to expand the PUC's jurisdiction or authority." (*McPherson*, *supra*, 38 Cal.4th at p. 1044, fn. 9, original italics; see generally *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 902 ["a case is not authority for a point that was not actually decided by

the court"].) Plaintiffs argue that section 7451 presents "the type of conflict issue" reserved by the Court in *McPherson* (Pet. 9) because it "directly conflicts with existing law that makes" app-based drivers eligible for standard workers' compensation benefits (Pet. 29; see OBM 26-27).

But the circumstances of *McPherson* indicate that the type of "conflict" the Court had in mind in footnote 9 was not a mere policy change by the voters that contravenes a statute previously enacted by the Legislature. *McPherson* involved the PUC's authority to regulate independent electric service providers. (See 38 Cal.4th at p. 1026.) Under the existing statutory scheme that the Legislature had enacted, those providers "were required to register with the PUC for licensing purposes, but their rates and terms of service explicitly were *not* subject to PUC regulation." (*Ibid.*; see Pub. Util. Code, § 394, subd. (f), added by Stats. 1997, ch. 275, § 13, p. 1317; Pub. Util. Code, § 218.3, added by Stats. 1999, ch. 1005, § 4, p. 7678.)[8] The initiative challenged in *McPherson* would have directly contradicted the Legislature's policy choice: it would have changed the statute to subject the same providers to "the jurisdiction, control, and regulation of the commission," *including* "regulation of [their] rates and terms and conditions of service." (38 Cal.4th at p. 1026, fn. 1; see Ballot Pamp., *supra*, text of Prop. 80, § 2, subd. (b)(3), p. 72; *id.*, § 3,

[8] See also Ballot Pamp., Special Elec. (Nov. 8, 2005) analysis of Prop. 80, p. 50 ("Under current law, [electric service providers] are only required to register with the PUC for licensing purposes; their rates and terms of service are not regulated by the PUC.").

p. 73; *id.*, § 9, p. 75.) Still, this Court held that the initiative would be a permissible exercise of "the people's reserved right to legislate through the initiative power." (38 Cal.4th at p. 1043.)

Nor would it make sense to forbid the voters from enacting a statute merely because the initiative "directly conflicts with" (OBM 26) a prior policy choice by the Legislature. The power to legislate necessarily includes the power to adjust, revise, and (at times) contradict pre-existing legislation. (See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255.) As *McPherson* recognized, that power is generally shared by the Legislature and the voters. (*Ante*, p. 28.) But the rule suggested by plaintiffs would give the Legislature a first-mover advantage, allowing its initial policy choices to freeze out subsequent efforts by the voters to enact contradictory policies through a statutory initiative.[9] That rule finds no support in *McPherson*.

A more sensible understanding of footnote 9 in *McPherson* is that the Court reserved judgment on a hypothetical voter initiative purporting to freeze the *Legislature* out of future policymaking by obstructing that body's exercise of its express constitutional authority to augment the jurisdiction of the Public Utilities Commission. Plaintiffs argue that Proposition 22 presents a like concern with respect to the Legislature's express

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[9] Under plaintiffs' proposed rule, for example, the voters would not have been able to enact AB 5 by initiative. As plaintiffs appear to acknowledge (see OBM 15, 36), AB 5 revised the worker-classification standard that the Legislature had previously adopted for purposes of determining eligibility for workers' compensation.

plenary authority to create and modify a workers' compensation system. (OBM 22-24, 26-27.) That argument raises novel questions about the interplay between articles II and XIV of the Constitution, and about the appropriate remedy if a constitutional defect were identified in the separate provision of Proposition 22—section 7465—that purports to limit the Legislature's ability to amend Proposition 22. (*Post*, pp. 40-44.)

But as in *McPherson*, it is not necessary to reach those issues to answer the narrow question on which the Court granted review. As the Court made clear, the question here focuses exclusively on the validity of section 7451. And nothing in section 7451 purports to limit or interfere with the Legislature's authority to legislate on the subject of workers' compensation. Plaintiffs' real concern is with different provisions of law—section 7465 and article II, section 10(c) of the Constitution. Plaintiffs argue that those provisions "permanently restrain[] the Legislature from exercising its . . . 'plenary' and 'unlimited' authority to" define app-based drivers as workers entitled to workers' compensation coverage. (Pet. 8; see OBM 22-24.) We address below why it would be better for the Court not to reach that argument in this case—and why, in any event, that argument is not correct. (*Post*, pp. 37-46.)

3. Before turning to that issue, however, we respond to an additional theory raised by the dissent below. The dissent viewed article XIV, section 4 as containing certain "substantive limits on *any* exercise of legislative power, whether exercised by initiative statute or by enactment of the Legislature." (Conc. & dis. opn. 5.)

On that view, the dissent reasoned that section 4 "precludes any legislative attempt to revise the basic outline of the constitutionally mandated scheme for compensating workers injured or killed while engaged in 'employment.'" (*Id.* at p. 6.)

That theory finds no support in text or precedent. Section 4 vests the Legislature "with plenary power . . . to create, and enforce a complete system of workers' compensation, by appropriate legislation[.]" While section 4 defines various features that "a complete system of workers' compensation" *may* "include[]," it does not direct that the Legislature "shall" enact (or retain) any (or all) of those features. To the contrary, the power vested by section 4 is "plenary," and "[a] corollary of the legislative power to make new laws is the power to abrogate existing ones." (*California Redevelopment Assn.*, *supra*, 54 Cal.4th at p. 255.) The text of section 4 thus cannot reasonably be read to create any "minimum constitutional baseline" that "no statute can go below." (Conc. & dis. opn. 8.)

The dissent invoked this Court's decisions in *Mathews*, *supra*, 6 Cal.3d at pp. 734-735, and *Hustedt v. Workers' Compensation Appeals Board* (1981) 30 Cal.3d 329, as support for its position that "statutory revisions altering the 'basic features' of" the "pre-1918 statutory scheme" for workers' compensation are impermissible. (Conc. & dis. opn. 6; see *id.* at pp. 6-7, 9-10, & fn. 9.) That is not what those cases held.

Mathews held that section 4 "does not prohibit the Legislature from conditioning the right to compensation upon the absence of willful misconduct or other intentional wrongdoing."

(6 Cal.3d at pp. 724-725; see OBM 34-35.) The Court emphasized that the "basic provisions of the workmens' compensation law" (6 Cal.3d at p. 734)—since before 1918—had always provided that "the employer was not liable for compensation if the injury was caused by the employee's own willful misconduct" (*id.* at pp. 729-730). Because section 4 was intended to "remov[e] all doubts as to the constitutionality of the . . . workmen's compensation statutes" on the books when section 4 was adopted (*id.* at pp. 734-735), the Court concluded that it could not plausibly be read "to forbid the Legislature from conditioning compensation on the absence of intentional wrongdoing" (*id.* at p. 734).

But the Court nowhere held or suggested that section 4 created a substantive constitutional floor that "no statute can go below." (Conc. & dis. opn. 8.) To the contrary, *Mathews* recognized that the Legislature enjoys broad discretion to "exclud[e] certain classes of persons from coverage." (*Mathews*, *supra*, 6 Cal.3d at p. 739; see *id.* at pp. 733-738; see, e.g., *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1008.) That recognition follows straightforwardly from section 4's text, which vests the Legislature with authority to provide workers' compensation coverage to "*any or* all" workers. (Italics added.)

In *Hustedt*, the Court considered a separation-of-powers challenge to a statute granting the Workers' Compensation Appeals Board the power to discipline attorneys. (30 Cal.3d at p. 333.) It was undisputed "that the discipline of attorneys is a judicial function" that is "among the inherent powers of the article VI courts." (*Id.* at p. 336.) This Court held that the

"Legislature overreached its traditionally recognized authority" when it attempted to bestow that power on the Board, and that "[a]rticle XIV, section 4 provides no authority" to justify that "transfer [of] . . . judicial power." (*Id.* at pp. 342, 346.) *Hustedt* offers no support for the dissent's theory that section 4 enshrined in our constitution a substantive floor defined by the features of the pre-1918 workers' compensation statute.

Plaintiffs do not defend most of the dissent's reasoning on this point. But they do suggest that section 7451 is contrary to the "express[] declar[ation]" in article XIV, section 4 that the provision of a "complete system of workers' compensation" to "any or all" workers represents "the social public policy of this State." (OBM 35.) What plaintiffs overlook, however, is that the voters plainly intended for that "social public policy" to be carried out though *legislative* judgments about the proper scope of a workers' compensation system—not judicial determinations about such complex questions of social and economic policy. (See, e.g., *Mathews*, *supra*, 6 Cal.3d at p. 737; *Subsequent Injuries Fund*, *supra*, 39 Cal.2d at pp. 87-89; *Bautista*, *supra*, 201 Cal.App.4th at pp. 729-731; *Wal-Mart Stores v. Workers Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442-1443.)

II. THE COURT NEED NOT DECIDE WHETHER A FUTURE LEGISLATURE MAY SPECIFY THAT APP-BASED DRIVERS ARE ENTITLED TO WORKERS' COMPENSATION COVERAGE

One of plaintiffs' principal claims is that Proposition 22 "permanently strips" the Legislature of authority to define app-based drivers as workers entitled to workers' compensation coverage. (Pet. 8; see, e.g., OBM 22-24, 40-41.) Plaintiffs urge

the Court to invalidate section 7451 on that basis—and then strike down Proposition 22 in its entirety on the ground that section 7451 is inseverable. But the issue in this case—as expressly formulated by the Court—does not encompass any questions about the Legislature's prospective authority to provide workers' compensation to app-based drivers. And even if the Court were to reach such questions, there would be no basis for invalidating section 7451, or Proposition 22 in its entirety.

A. Only section 7451's validity is presented here

In asserting that Proposition 22 permanently denies the Legislature "authority to provide [approximately] 1.3 million [app-based drivers] with the protections of a complete workers' compensation system" (OBM 23), plaintiffs do not rely on section 7451. They instead invoke section 7465, which restricts the Legislature's authority to amend Proposition 22 (*ante*, p. 21), and article II, section 10(c), of the Constitution, which generally requires the Legislature to obtain voter approval before amending initiative statutes (*ante*, p. 13; see OBM 23-24). In plaintiffs' view, those restrictions are inconsistent with the Legislature's sweeping plenary power under article XIV, section 4. (OBM 24.) But the sole issue presented in this case is whether *section 7451* is valid—not whether section 7465 is constitutional or how to resolve any tension between article II, section 10(c) and article XIV, section 4.

It made sense for the Court to limit the issue presented in that way. It would be premature to address any questions about the Legislature's power to enact future legislation that defines

app-based drivers as workers entitled to workers' compensation. Ripeness doctrine "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements" (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171), or issuing "advisory opinions" (*id.* at p. 170). And here, the hypothetical validity of legislation providing workers' compensation coverage to app-based drivers would not be "ripe for adjudication" "[u]nless and until the Legislature" actually enacted such a statute. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1024, 1050; see *Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1043.) In light of the competing policy considerations in this area, it remains to be seen whether the Legislature would advance such a proposal.[10]

It would also be speculative at this juncture to predict what shape such legislation might take and what the relevant constitutional analysis would be in assessing its validity. The

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[10] On one hand, labor policy experts have raised questions about whether Proposition 22-required accident insurance provides an acceptable substitute for workers' compensation. (See, e.g., Fuentes et al., National Employment Law Project, Rigging the Gig (2020) pp. 13-15 <https://www.nelp.org/publication/rigging-the-gig/> [as of Dec. 11, 2023].) On the other hand, it is rare for the Legislature to provide workers' compensation to workers that are classified as independent contractors for all other purposes. (Cf. Cal. Dept. of Human Resources, Workers' Compensation Coverage for Volunteers <https://www.calhr.ca.gov/employees/Pages/wc-volunteers.aspx> [as of Dec. 11, 2023] [discussing provision making non-employee volunteers eligible for coverage in certain circumstances].)

Legislature could, for example, amend section 7451 to classify app-based drivers as "employees" for purposes of workers' compensation coverage. Because such an amendment would plainly violate section 7465 (see § 7465, subd. (c)(2); *ante*, p. 21), the relevant question would be whether section 7465 unconstitutionally restricts the Legislature's plenary power under article XIV, section 4. Alternatively, the Legislature might declare that app-based drivers are entitled to workers' compensation regardless of whether they are classified as "employees" or "independent contractors." In that scenario, there would be a threshold question as to whether the legislation even qualifies as an "amendment" of Proposition 22. (See generally *People v. Kelly* (2010) 47 Cal.4th 1008, 1026-1027.) The Court should reserve judgment on those hypothetical questions and reject the sole relief that plaintiffs have requested here—an order invalidating section 7451 and Proposition 22 in its entirety.[11]

B. In no event would the far-reaching relief requested by plaintiffs be warranted

Even if the Court were inclined to address a hypothetical scenario in which the Legislature specified that app-based drivers are entitled to workers' compensation, there would be no basis to grant the broad relief that plaintiffs seek.

1. Assuming that such legislation would qualify as an "amendment" of Proposition 22 (see *Kelly*, *supra*, 47 Cal.4th at

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[11] The Court may wish to note explicitly in its opinion that those hypothetical questions remain open, to avoid any mistaken inference that such legislation would necessarily be invalid.

pp. 1026-1027), the principal question in evaluating its validity would be how to reconcile the tension between article XIV, section 4 and article II, section 10(c). On its face, section 4 grants the Legislature virtually unlimited authority to enact and administer a workers' compensation regime. Read in isolation, however, section 10(c) could be construed to impose a substantial limitation on that authority when it comes to initiatives addressing workers' compensation. As noted above (*ante*, p. 13), section 10(c) generally authorizes the electorate to restrict or prohibit the Legislature from amending initiative statutes without obtaining voter approval. Because of the difficulty of seeking and securing such approval, initiative statutes are often placed "effectively beyond legislative control." (Grodin et al., The California State Constitution (2nd ed., 2016) p. 120.)[12]

This Court confronted a similar issue in *County of Los Angeles*, *supra*, 43 Cal.3d at p. 58, which addressed a "potential conflict" between article XIV, section 4 and article XIII B, section 6. That potential conflict arose when the Legislature increased benefit levels under the workers' compensation regime, including for local government employees. (*Id.* at pp. 50-52, 58-59.) Applying article XIII B, section 6, a lower court held that the State was required to reimburse local governments for certain costs of providing workers' compensation benefits. (*Id.* at p. 54.) As this Court recognized, however, imposing that reimbursement

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[12] See Center for Governmental Studies, Democracy by Initiative (2d ed. 2008) p. 114 (describing initiatives as "'written in stone'"), quoted in *Kelly*, *supra*, 47 Cal.4th at p. 1030.

requirement would have "restrict[ed] the power of the Legislature over workers' compensation" by forcing it to enact new revenue-raising legislation (*id.* at p. 60)—legislation requiring "a supermajority vote of two-thirds of the members of each house of the Legislature" (*id.* at p. 59). The Court thus narrowly construed article XIII B, section 6 to avoid that "substantial impact on the ability of the Legislature to make future changes" in the workers' compensation scheme. (*Ibid.*)

If the Court addressed the tension between article XIV, section 4 and article II, section 10(c), a similar approach would be warranted. Like the supermajority requirement at issue in *County of Los Angeles*, the general voter-approval rule in section 10(c) would have a "far-reaching" impact on the Legislature's ability to enact its favored workers' compensation-related policies by a "simple majority vote of each house." (43 Cal.3d at p. 57; see *id.* at pp. 59-60.) The way to avoid that result would be to allow the Legislature to amend initiative statutes without voter approval in those limited circumstances where it acts pursuant to its plenary authority under article XIV, section 4.

The text of section 4 supports that approach. It vests "[t]he Legislature" with "plenary power, unlimited by any provision of [the] Constitution." The term "Legislature" means "the Senate and Assembly." (Cal. Const., art. IV, § 1; see *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183,

1207.)[13] If the electorate could require the Legislature to obtain voter approval before amending workers' compensation-related initiative statutes, the Legislature's power to enact and administer the workers' compensation system would be neither "plenary"—meaning "complete" and "unqualified" (*ante*, pp. 27-28, & fn. 6)—nor "unlimited by [another] provision of [the] Constitution." Indeed, the electorate could go much further than it did in Proposition 22: it could slash benefits, exclude additional classes of workers from coverage, or even abolish the workers' compensation system entirely, leaving the Legislature virtually powerless to respond.

In interveners' view, there is nothing problematic about giving the electorate "'the final legislative word'" over workers' compensation. (Answer to Pet. 25.) According to interveners, the Legislature's power over workers' compensation should be treated no differently from legislative authority over any other subject matter. (See, e.g., Court of Appeal Opening Brief (AOB) 36-41.) But the reason that power over workers' compensation should be treated differently is that the constitutional text singles out workers' compensation for special treatment. Only three other

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[13] The Court of Appeal read *McPherson* to hold that the term "Legislature" means "[t]he Legislature or the electorate acting through the initiative power." (Opn. 14, italics and internal quotation marks omitted.) That is not the best reading of *McPherson*. *McPherson* merely held that "plenary" does not mean "exclusive"—and that the voters have broad authority under articles II and IV to enact statutes on virtually any subject. (See 38 Cal.4th at pp. 1033-1035, discussing *Kennedy Wholesale*, *supra*, 539 Cal.3d at pp. 249-251; *ante*, pp. 27-29, 32-33.)

constitutional provisions expressly grant "plenary" power to the Legislature. (See Cal. Const., art. XII, § 5; *id.*, art. XIII, § 8.5; *id.*, art. XVI, § 11.) And only one other—article XII, section 5—makes clear that the Legislature's express plenary authority is "unlimited" by other provisions of the Constitution.

Interveners also argue that article II, section 10(c) "simply sets forth [a] procedure[] that govern[s] . . . lawmaking," much like "the gubernatorial veto." (AOB 39.) But like the supermajority requirement addressed in *County of Los Angeles*—which is also a "procedure that governs lawmaking" (see *ante*, p. 42)—application of article II, section 10(c) in this context would have a "substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme." (43 Cal.3d at p. 59.) The same cannot be said of the routine requirement to submit bills to the Governor. It would be passing strange to think that section 4's proponents intended to allow the Legislature to enact workers' compensation-related statutes without obtaining the Governor's approval. (See generally *Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 567 ["we must adopt a construction of the Constitution that avoids . . . absurdity"].)

2. If the Court were to reach this issue (but see *ante*, pp. 38-40) and agree with the State's analysis, it would be unnecessary and improper to grant the far-reaching remedy that plaintiffs have requested: an order invalidating section 7451 and Proposition 22 in its entirety. (1 AA 26-27, 29.)

First, that relief would be far broader than necessary. The proper remedy would instead be a judicial declaration that, notwithstanding section 7465 and article II, section 10(c), the Legislature retains authority to define app-based drivers as workers covered under the workers' compensation system. (See generally *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 307.) So long as the Legislature retains that authority, section 7451 does not burden the Legislature's plenary power under article XIV, section 4 in any material respect.

Second, "constitutional provisions must be harmonized," insofar as possible, "to give effect to all parts." (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 58, brackets omitted.) Although invalidating section 7451 would have the knock-on effect of freeing the Legislature to exercise its authority under section 4, that approach would unnecessarily restrict the electorate from exercising *its* lawmaking powers under articles II and IV. In fact, plaintiffs' preferred approach would appear to require the courts to strike down virtually all initiatives related to workers' compensation. (See OBM 23-24, 26-27.) The practical result would be to give the Legislature near-exclusive authority in this area—despite the absence of any textual or historical support for such a sweeping limit on the voters' power. (*Ante*, pp. 27-30.)[14]

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[14] Plaintiffs suggested below that "it might well be possible" to construe article XIV, section 4 to invalidate workers' compensation-related initiatives only insofar as they *contract* the scope of coverage. (Respondents' Br. 40.) But they provided no support in the text or history of section 4 for any such principle.

Third, any constitutional problems with section 7465 would not justify invalidating section 7451 (or Proposition 22 in its entirety). While section 7465 may be constitutionally problematic insofar as it would block the Legislature from providing app-based drivers with workers' compensation coverage (see *ante*, pp. 40-44), "'[a] statute should be upheld if, after deletion of [an] invalid application, a workable statute remains.'" (*Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 266, brackets omitted.) The appropriate remedy would thus be as-applied relief: an order "disapprov[ing], or disallow[ing], only the unconstitutional application[s]" of section 7465. (*Kelly*, *supra*, 47 Cal.4th at p. 1048, italics omitted; cf. opn. 62-63 [invalidating aspects of section 7465 on separation-of-powers grounds not at issue here].)

Indeed, Proposition 22's severability provision expressly provides that "any . . . [invalid] application[s]" (except for applications of section 7451) are severable from the remainder of the initiative. (§ 7467, subd. (a).) This Court has previously enforced similar severability provisions. (See, e.g., *Walnut Creek Manor*, *supra*, 54 Cal.3d at p. 267.) That approach is consistent with "the fundamental proposition that in resolving a legal claim, a court should speak as narrowly as possible and resort to invalidation of a statute" only to the limited extent necessary. (*Kelly*, *supra*, 47 Cal.4th at p. 1047.)

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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December 11, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13 point Century Schoolbook font and contains 9,383 words.

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