No. A163655

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

HECTOR CASTELLANOS; JOSEPH DELGADO; SAORI OKAWA; MICHAEL ROBINSON; SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL; SERVICE EMPLOYEES INTERNATIONAL UNION,
Petitioners and Respondents,

v.

STATE OF CALIFORNIA; KATIE HAGEN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,
Defendants and Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE; KEITH YANDELL,
Intervenors and Appellants.

On Appeal From The Superior Court Of Alameda County
Case No. RG21088725
The Honorable Frank Roesch, presiding

INTERVENORS-APPELLANTS' OPENING BRIEF

O'MELVENY & MYERS LLP
*Jeffrey L. Fisher, SBN 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, SBN 62705
Sean P. Welch, SBN 227101
Kurt R. Oneto, SBN 248301
David J. Lazarus, SBN 304352
1415 L Street, Suite 1200
Sacramento, CA 95814
Telephone: (916) 446-6752
Facsimile: (916) 446-6106
swelch@nmgovlaw.com

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

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL First **APPELLATE DISTRICT, DIVISION** 4	COURT OF APPEAL CASE NUMBER: A163655
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 227101 NAME: Sean P. Welch FIRM NAME: Nielsen Merksamer Parrinello Gross & Leoni LLP STREET ADDRESS: 2350 Kerner Blvd., Suite 250 CITY: San Rafael STATE: CA ZIP CODE: 94901 TELEPHONE NO.: 415.389.6800 FAX NO.: 415.388.6874 E-MAIL ADDRESS: swelch@nmgovlaw.com ATTORNEY FOR (*name*): Protect App-Based Drivers and Services; Davis White; Keith Yandell	SUPERIOR COURT CASE NUMBER: RG21088725
APPELLANT/ PETITIONER: Protect App-Based Services, et al. RESPONDENT/ REAL PARTY IN INTEREST: Hector Castellanos, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Protect App-Based Drivers and Services, et al.

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)	DoorDash, Inc.	Supporter of Yes on 22 ballot measure committee
(2)	Lyft, Inc.	Supporter of Yes on 22 ballot measure committee
(3)	Maplebear, Inc. dba Instacart	Supporter of Yes on 22 ballot measure committee
(4)	Uber Technologies, Inc.	Supporter of Yes on 22 ballot measure committee
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 11/02/2021

Sean P. Welch
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

TABLE OF AUTHORITIES
(continued)

Page(s)

Other Authorities

Treatises

TABLE OF AUTHORITIES
(continued)

Page(s)

Constitutional Provisions

INTRODUCTION

The California Constitution's most central principle is that "all political power is inherent in the people." (CAL. CONST. OF 1849, art. I, § 2; see CAL. CONST., art. II, § 1.) To protect this inherent power, the People have "reserve[d] to themselves the powers of initiative and referendum" (CAL. CONST., art. IV, § 1) and have legislated by initiative in areas as diverse as criminal justice, political reform, and environmental protection. Courts in California have *never* before ruled *any* subject off-limits to initiative statutes. To the contrary, courts consistently have upheld the People's exercise of their direct lawmaking power, stressing the judiciary's "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; see, e.g., *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 945–946; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1070–1071.)

The trial court's decision striking down Proposition 22 represents a sharp and singular break from this clear and longstanding precedent.

Proposition 22 is quintessentially Californian—a comprehensive and innovative solution to the question of classifying workers in the modern, on-demand economy. Enacted by a 17% margin (winning nearly 10 million "yes" votes and 50 of 58 counties), the initiative secured for app-based drivers the autonomy ordinarily enjoyed only by independent contractors

while guaranteeing many of the benefits traditionally afforded to employees. Proposition 22's hybrid system was supported by over 120,000 app-based drivers and 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.

Three months after the initiative passed, Petitioners filed this suit seeking to overturn the will of the People with a host of novel state constitutional challenges. The trial court (the Honorable Frank Roesch) declared the initiative invalid. That decision is deeply mistaken on all three grounds on which it rests:

First, the trial court erred in holding that the People lack the power to enact, by initiative statute, a classification test for certain workers. California has *never* recognized such a subject-matter limitation on the power of initiative. To the contrary, the Supreme Court has repeatedly held that "the power of the people [to enact statutes] through the statutory initiative is coextensive with the power of the Legislature." (*Ind. Energy Producers v. McPherson* (2006) 38 Cal.4th 1020, 1032 (*IEP*); see also *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1042.)

This principle holds equally true where the Legislature has "plenary power." The trial court perceived a conflict between article XIV § 4 (which clarifies the Legislature's "plenary" and "unlimited" power over workers' compensation) and article II § 10(c) (which requires voter approval to amend an initiative). It thus invalidated Proposition 22 on the theory that the

Legislature's power is not "plenary" or "unlimited" if the People can enact initiative statutes that, under article II § 10(c), the Legislature may amend only with the People's approval. (AA 889.) But "plenary" authority does not mean "exclusive" authority. (*IEP*, 38 Cal.4th at 1032.) Article II § 10(c) does not conflict with the Legislature's power any more than does the Constitution's provision for gubernatorial veto; both provisions simply set the constitutional process by which the Legislature's power is exercised. Indeed, article II § 10(c) is intended to *protect* the People's power to make policy choices through the initiative process. The notion that article II § 10(c) works in combination with article XIV § 4 to strip the People of the power to legislate by initiative turns article II § 10(c)—indeed, the California Constitution itself—on its head.

Second, the trial court erred in holding that Proposition 22 violates the separation of powers. Section 7465(c)(4) of the initiative authorizes certain amendments to Proposition 22 and establishes the conditions under which the Legislature may enact them. The trial court ruled that, in setting those conditions, section 7465(c)(4) unconstitutionally restricts the Legislature's power. As an initial matter, that claim is not ripe because the Legislature has not enacted any law that even arguably implicates the provision.

Even if the claim were ripe, it would fail. Section 7465(c)(4) merely expresses the People's view that legislation authorizing collective bargaining over the same subjects covered by Proposition 22 would constitute an amendment to the initiative. It does not

require courts to adopt the same view, and so does not violate the separation of powers. As courts have recognized when reviewing challenges to similar legislative expressions, such provisions do not foreclose judicial review or impermissibly constrain the Legislature's power. (See, e.g., *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1245, 1251–1256.) And even if section 7465(c)(4) were binding, it would survive a facial challenge because collective-bargaining legislation can easily constitute an amendment by shifting the balance and effect of Proposition 22's provisions.

Third, the trial court incorrectly held that the same provision referencing collective-bargaining legislation—section 7465(c)(4)—violates the single-subject rule. The Supreme Court has instructed courts not to interpret the single-subject rule in a "narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Briggs v. Brown* (2017) 3 Cal.5th 808, 828.) Rather, the Court has "long held that the … rule is satisfied so long as challenged provisions meet the test of being reasonably germane to a common theme, purpose, or subject." (*Brown v. Superior Court* (2016) 63 Cal.4th 335, 350, quotation marks omitted.)

Section 7465(c)(4) is not just "reasonably germane" to the initiative's common theme and subject; it directly furthers Proposition 22's purpose because it conditionally permits legislation authorizing collective bargaining over the very same issues expressly addressed by the initiative. At a bare minimum,

Proposition 22's treatment of collective bargaining is "auxiliary to and promotive of [the initiative's] main purpose." (*Fair Pol. Practices Comm'n v. Superior Court* (1979) 25 Cal.3d 33, 39.)

In sum, the trial court's invalidation of Proposition 22 is at odds with key constitutional structures at the root of California's innovative form of democracy. Article II's amendment and single-subject provisions work to enable the voters to enact comprehensive reforms and protect those policy choices from interference by the Legislature. At each turn, however, the trial court weaponized these provisions *against* the initiative power, depriving the People of their ultimate authority over the public policy of the State. If affirmed, the decision would permanently impair the People's initiative power and would equally hamstring any future expansion of workers' benefits by initiative.

This Court should reverse the judgment and direct the trial court to deny the petition.

LEGAL AND FACTUAL BACKGROUND

I. The Initiative Power in the California Constitution

In 1911, the People enshrined the initiative power in the California Constitution, thereby reserving for the People the power to enact statutes as a check on the Legislature's rapid consolidation of political power at the People's expense. (Dinan and Heckelman, *Support for Progressive Reforms: Evidence from California's 1911 Referenda*, J. Interdisciplinary History (Autumn 2020).) California voters approved this constitutional amendment in order to "give the [P]eople power to control legislation of the

state," "reserve" the People's "power to propose and to enact laws which the legislature may have refused," and provide 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." (AA 756–759.)[1]

The Supreme Court has long recognized the initiative power as "one of the outstanding achievements of the progressive moment of the early 1900's." (*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 [P]eople," the initiative power is not a right *granted to* the People but, rather, one the People *reserved*. (*IEP*, 38 Cal.4th at 1032; CAL. CONST., art. IV, § 1.)

II. Article XIV § 4 and the State's Workers' Compensation Law

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 law. (Hanna, Cal. Law of Employee Injuries and Workmen's Compensation (2d ed. 1981) §§ 1.01, 1.02

---

1 The initiative power was originally enacted in 1911 as article IV § 1 and amended by Proposition 12 in 1946 to add the procedure for amending or repealing initiatives. (See *People v. Kelly* (2010) 47 Cal.4th 1008 at 1035–1038.) In 1966, the initiative provisions were relocated to article IV § 22 et seq., and the provision regarding amendment or repeal was rephrased "without substantive change[] to read as it does today." (*Id.* at 1040.) The provision was renumbered in 1976 to its current location at article II § 10. (*Ibid.*)

[AA 761–767].)[2] Workers' compensation laws typically require employers to make payments to employees who are injured or disabled in connection with employment.

Around the same time, many workers' compensation regimes were the subject of *Lochner*-era constitutional challenges, some of which were successful. (*Id.*, § 1.02.) To shield California's workers' compensation statute from such an attack, Californians adopted the current version of article XIV § 4 in 1918.[3] That provision states that the Legislature is "expressly vested with plenary power, unlimited by any provision of th[e] Constitution, to create, and enforce a complete system of workers' compensation." (CAL. CONST., art. XIV, § 4.) The "*sole* purpose" of article XIV § 4 was to remove "all doubts as to the constitutionality" of the workers' compensation statute, which was enacted in 1911 and amended in 1913 and 1917. (*Mathews v. Workmen's Comp. App. Bd.* (1972) 6 Cal.3d 719, 735 & fn. 11, italics added; see also *Yosemite L. Co. v. Industrial Acc. Com.* (1922) 187 Cal. 774, 780, 782 [the provision "was designed to give authority for the

---

2 The trial court erroneously denied Intervenors' request for judicial notice with respect to Exhibits B, D, E, and G. As discussed more thoroughly in Intervenors-Appellants' accompanying Motion for Judicial Notice, each of these exhibits is properly subject to judicial notice under Evidence Code section 452(h) and is relevant to deciding the issues in this appeal.

3 Prior to 1976, when various articles of the California Constitution were renumbered for coherence and clarity, the text of current article XIV § 4 was found in article XX § 21. (See *Mathews*, 6 Cal.3d at 724 fn. 2, 734.) The 1976 renumbering did not change the substance of the provision.

legislation already enacted and to sanction the plan then in existence"].)

In short, article XIV § 4 allows for the creation of a workers' compensation scheme for "*any* or all … workers"—but it does not *require* such a scheme for any group of workers. Courts thus have long made it clear that particular groups may be excluded from the workers' compensation system. (See, e.g., *Western Indem. Co. v. Pillsbury* (1915) 170 Cal. 686, 701–702 [rejecting argument that workers' compensation system was unconstitutional because it excluded agricultural workers (among others)].) Indeed, the first Workers' Compensation Act excluded independent contractors from receiving any benefits—and still does to this day.[4]

III. Evolving Worker Classification Standards

The legal standards for classifying workers as independent contractors or employees have been changed repeatedly by the Legislature and the courts over the last century, with the effect of expanding and contracting the workers' compensation system. Decades ago, California courts adopted and refined a multi-factor test to determine whether a worker was an employee or independent contractor under the Act—the principal factor being

---

4 The Roseberry Act, California's first workers' compensation statute, applied only to "an employer for any personal injury accidentally sustained by his employees." (Roseberry Act, Stats. 1911, ch. 399, p. 796.) To this day, "[t]he Workers' Compensation Act … extends only to injuries suffered by an 'employee,'" which "do[es] not include independent contractors." (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349 [citing Lab. Code §§ 3600, 3700; CAL. CONST., art. XIV, § 4].)

"whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*Borello*, 48 Cal.3d at 345, 350, 352–353.)

In 2019, the Legislature in AB 5 codified the "ABC" classification test, which the Supreme Court had adopted a year earlier for wage orders in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. In addition to considering whether the worker is free from a hiring entity's control, the ABC test asks whether the worker performs work within the usual course of a hiring entity's business and whether the worker is customarily engaged in an independent business. (*Id.* at 957.) With AB 5, the Legislature extended the ABC test to other subjects beyond wage orders, including workers' compensation. But AB 5 also newly *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].)

Just a year after it enacted AB 5, the Legislature modified the standard yet again. It passed AB 2257, which carved out a long list of additional occupations from the ABC test, making it easier for workers in dozens more occupations to be classified as independent contractors. (*Id.*, §§ 2775–2785.)

IV. The Rise of On-Demand Digital Platforms

Responding to recent technological advancements, innovators in California developed the concept of on-demand

digital platforms for various services. (See Annette Bernhardt, Allen Prohofsky, & Jesse Rothstein, *The "Gig Economy" and Independent Contracting: Evidence from California Tax Data*, California Policy Lab, at p. 4 (Aug. 2019).) Harnessing new computing and communication technologies, many California companies created new businesses focusing 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 who engage in such work enjoy unprecedented autonomy and can work (or choose not to work) whenever and wherever they want, using any combination of platforms they choose.[5]

Work using new digital platforms is inconsistent with traditional employment models that are characterized by a lack of flexibility, emphasis on shift work, and reliance on strong employer control. A primary attraction of app-based work, by contrast, is worker independence and autonomy—working if and when you want. *Employees* cannot unilaterally decide that they do not want to work this week or this month, and then freely return to work after that. But this freedom is central to app-based workers, who can schedule work around their lives and not the other way around.

---

5 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).)

To combine that freedom with added economic security, some began advocating for app-based workers to have some of the benefits traditionally associated with employment, such as health insurance. As early as 2015, Californians began formulating an innovative "third way" aimed at giving app-based drivers elements of both worlds—many of the benefits traditionally available to employees, and 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, at p. 2 (Dec. 2015) [proposing a new classification called "independent worker" where workers in the gig economy "would qualify for many, although not all, of the benefits and protections that employees receive" but still enjoy "the ability to choose when to work, and whether to work at all"]; 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 [advocating for California to "adopt an exception" for app-based workers "that would be a hybrid classification between the employee and independent contractor laws"].) Network companies carried forward those efforts by leading a coalition that put forth Proposition 22—the latest installment in California's lengthy history of refining the distinction between employees and independent contractors. 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 over 120,000 app-based drivers who signed up to actively support the campaign.

V. Proposition 22 Comprehensively Reforms the Labor Regulation of App-Based Drivers

Proposition 22 enacts a comprehensive reform of the labor regulatory framework applicable to app-based workers. (See Bus. & Prof. Code, §§ 7449–7450.) As the initiative's text explains, 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." (*Id.* § 7449(e)–(f).)

As the courts did in *Borello* and *Dynamex*, and as the Legislature did through AB 5 and AB 2257, Proposition 22 establishes a new test for the classification of certain workers. Under this new test, 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. (Bus. & Prof. Code, § 7451; Proposition 22, art. 2.)

Having established a new classification test, Proposition 22 then prescribes regulations for the compensation, benefits, and working conditions for app-based workers who meet its criteria. These workers maintain their flexibility and are guaranteed a

package of benefits, such as a health insurance stipend, minimum earnings guarantee (20% *above* the minimum wage that would apply if they were employees, plus compensation for mileage), medical and income protection, occupational-accident insurance, and certain contract, anti-discrimination, and termination rights. (Bus. & Prof. Code, §§ 7451, 7453–7455.)

Proposition 22 allows the Legislature to amend the initiative, under certain conditions—including that the legislation furthers the initiative's purposes and passes with a supermajority. (Bus. & Prof. Code, § 7465(a).) And it expresses the view that certain types of legislation would constitute amendments. (*Id.*, §§ 7465(c)(3), (c)(4).) As relevant here, section 7465(c)(4) states that subsequent enactments would constitute amendments if they authorize collective bargaining regarding the subject matter of the initiative.

Proposition 22 was one of the most visible initiative campaigns in California history. Proponents extolled the benefits of creating a new hybrid system of benefits and protections for app-based drivers, while opponents (including Petitioners) argued for full employee status. Among other things, opponents stressed that if "Prop 22 passes," then "drivers won't be able to leverage the power of collective bargaining." (AA 785–786; accord *id.* AA 788–791 [Petitioner Hector Castellanos urging voters to vote "No" on Proposition 22 because it would allegedly preclude an app-based drivers' union].) But Petitioners did not ever publicly suggest that, if enacted, Proposition 22 might have any constitutional defect.

In the November 2020 election, the voters who heard both sides' arguments 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. (AA 101 ¶ 12.)

PROCEDURAL HISTORY

Petitioners include some of Proposition 22's opponents in the November 2020 general election, particularly the Service Employees International Union (along with its California branch). Petitioners also include three app-based drivers who prefer to be classified as employees and one consumer of app-based services. (See, e.g., AA 788–791; AA 19–20.)

Proposition 22 went into effect on December 16, 2020. (See Bus. & Prof. Code, § 7448 et seq.) A month after Proposition 22 took effect, Petitioners filed an emergency petition for a writ of mandate in the California Supreme Court, asking the Court to declare Proposition 22 invalid. (See *Castellanos et al. v. State of California*, No. S266551 (Cal. Feb. 3, 2021).) The Court denied the petition. (See *Castellanos et al. v. State of California*, No. S266551 (Cal. Feb. 3, 2021).)

Petitioners then filed their petition in the trial court. (AA 14–41.) Petitioners named the State and Katie Hagen, in her official capacity as Director of the California Department of Industrial Relations, as respondents. The parties also stipulated to allow Protect App-Based Drivers and Services, along with proponents Davis White and Keith Yandell, to intervene as real

parties in interest. (AA 196–200.) 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*, https://tinyurl.com/y55sw2w3 [last visited Feb. 15, 2022].) 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. (AA 197 ¶ 3.)

On August 20, 2021, the trial court granted Petitioners' petition for a writ of mandate, declaring Proposition 22 unconstitutional on three grounds. (AA 886–897.)

First, the court held that Business & Professions Code section 7451, which implements Proposition 22's worker classification test for app-based drivers, is unconstitutional "because it limits the power of a future legislature to define app-based drivers as workers subject to workers' compensation law." (*Id.* at 896.) This holding rests on a novel and somewhat confusing interpretation of article XIV § 4. As the trial court noted, that provision clarifies "that the Legislature shall have the power to create worker[s'] compensation laws 'unlimited by any provision of this Constitution.'" (*Id.* at 888–889, quoting CAL. CONST., art. XIV, § 4.) Because "the Legislature" includes the People acting by initiative, the trial court recognized that this constitutional provision, standing alone, does not forbid initiatives affecting workers' compensation. (*Ibid.*)

But the trial court held that the Constitution's procedures governing initiatives nevertheless "conflict with" article XIV because article II § 10(c) provides that any amendment of an initiative statute by the Legislature takes effect only when approved by the voters. (*Id.* at 889.) Because article II § 10(c) requires assent from the People to amend or repeal an initiative, the court reasoned that section 7451—an initiative statute affecting workers' compensation—contravenes article XIV § 4's clause giving the Legislature "plenary-and-unlimited" power to enact legislation regarding workers' compensation. In the court's view, "[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)." (*Id.* at 889.) Further, because section 7451 "is not severable from the remainder of the statute," the trial court declared "the entirety of Proposition 22 … unenforceable." (*Id.* at 897.)

Second, the trial court held that section 7465(c)(4) unconstitutionally limits the Legislature's ability to pass future legislation about collective bargaining. (*Id.* at 897.) Section 7465(c)(4) provides a method for the Legislature to amend Proposition 22 and states that subsequent enactments would constitute amendments if they authorize collective bargaining regarding the subject matter of the initiative. The court reasoned that "[t]here is no other language in Proposition 22 that directly relates to labor representation or collective bargaining," and that

future legislation about collective bargaining therefore would not constitute an "amendment" of Proposition 22. (*Id.* at 894–895.)

Third, the trial court held that section 7465(c)(4)'s reference to collective bargaining—again, in the context of authorizing legislative amendments—means that Proposition 22 does not address a "single subject." According to the court, the collective-bargaining provision "does not promote the right to work as an independent contractor, nor does it protect work flexibility, nor does it provide minimum workplace safety and pay standards for those workers." (*Id.* at 896.) As a result, the court concluded that it is "related to Proposition 22's subject but it is utterly unrelated to its stated common purpose." (*Ibid.*)

JURISDICTIONAL STATEMENT

The trial court entered final judgment on September 13, 2021. (AA 898–913.) Intervenors-Appellants timely filed a notice of appeal on September 22, 2021. This Court has jurisdiction under Code of Civil Procedure section 904.1(a)(1).

STANDARD OF REVIEW

"'The interpretation of a statute and the determination of its constitutionality are questions of law.'" (*Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 90, citation omitted.) Accordingly, this Court reviews the trial court's order declaring Proposition 22 unconstitutional *de novo*. (*Ibid.*)

When reviewing the validity of an initiative measure, such as Proposition 22, the court must "liberally construe[]" the

initiative power. (*Eu*, 54 Cal.3d at 501.) Because the Constitution reserves "the ultimate legislative power" to the People, "a court" has no "power to limit that reserved right." (*Citizens Against a New Jail v. Board of Supervisors* (1976) 63 Cal.App.3d 559, 563.) Rather, 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 501, citations omitted.) "[A]ll presumptions favor the validity of initiative measures," and the court must uphold an initiative measure "unless [its] unconstitutionality clearly, positively, and unmistakably appears." (*Ibid.*) In the absence of an "unambiguous indication that a [constitutional] provision's purpose was to constrain the initiative power, [courts] will not construe it to impose such limitations." (*California Cannabis Coalition*, 3 Cal.5th at 945–946; see, e.g., *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 708.)

ARGUMENT

I. The Constitution Does Not Limit the Power of the People to Enact Initiatives Affecting Workers' Compensation

The trial court correctly recognized that article XIV, standing alone, allows the People to enact laws that expand or contract the workers' compensation system. But the trial court then held that, when article XIV is read in tandem with article II, the People lack any permissible means to exercise this legislative power. This conclusion contravenes fundamental tenets of

constitutional interpretation and puts the Constitution at war with itself.

A. Article XIV's Reference to Legislative Power Includes the People Acting Through the Initiative Process

Settled constitutional principles mandate that article XIV preserves the People's right to legislate on subjects affecting workers' compensation. The Constitution recognizes that "[a]ll political power is inherent in the people" (CAL. CONST., art. II, § 1), and it provides a mechanism for them to exercise it directly—by enacting initiative statutes (*id.*, art. II, §§ 8, 10; *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*, 63 Cal.App.3d at 563)—"one of the most precious rights of our democratic process" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 248).

The People's reserved initiative power includes every subject within the legislative power of the State. This power is so fundamental to the State's system of government that, 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.) When the Constitution restricts the initiative power in any manner, it does so expressly.[6]

---

6 (See CAL. CONST., art. II, § 12 [prohibiting any initiative statute that "names any individual to hold any office, or names or

"During the nearly 100 years since adoption of the statewide initiative process in California," courts have 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.) Thus, "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 must reasonably be interpreted to *include*, rather than to *preclude*, the right of the people through the initiative process to exercise similar legislative authority." (*IEP*, 38 Cal.4th at 1033.) The People cannot relinquish their legislative sovereignty through oblique implication. (*Kennedy Wholesale*, 53 Cal.3d at 249–251 [rejecting notion that voters implicitly repealed initiative power].)

These bedrock principles apply with full force to article XIV. Article XIV § 4 contains no restriction (explicit or otherwise) on the People's initiative authority. Legislation like Proposition 22 thus falls squarely within the People's initiative power. As the trial court correctly recognized, "long-standing California decisions establish that references in the California Constitution to the authority of the Legislature to enact specified legislation generally

---

identifies any private corporation to perform any function or to have any power or duty"]; *id.*, §§ 8(d) [single-subject requirement], (e) [prohibiting initiatives that include or exclude political subdivisions based on the votes in each subdivision], (f) [prohibiting conditional provisions that become law depending on a specific percentage of votes cast].)

are interpreted to include the people's reserved right to legislate through the initiative power." (AA 888, citing *IEP*, 38 Cal.4th at 1043.) Accordingly, "[t]he term 'legislature' in article XIV includes the people acting through the initiative power." (*Ibid.*) That recognition should have ended Petitioners' challenge.

B. Proposition 22 Does Not Contravene Article XIV's Recognition of "Plenary Power" to Create a Workers' Compensation System

Although the trial court recognized the People's reserved authority to enact initiative statutes that affect workers' compensation, it concluded that the People, as a practical matter, may never exercise that power. This is so, according to the trial court, because article XIV guarantees "plenary" legislative power over workers' compensation "unlimited by any provision of [the] Constitution." (AA 889.) Given that any initiative affecting workers' compensation would require (under article II) voter approval to amend or repeal it, the court thought that Proposition 22 transgresses the "plenary" and "unlimited" nature of the legislative power over that subject. (*Ibid.*) But this supposed "conflict" between articles XIV and II does not exist.

1. "Plenary Power" Does Not Mean Exclusive Power for the Legislature at the People's Expense

Supreme Court precedent and the history of article XIV foreclose the trial court's reasoning that "[t]he grant of power" in article XIV "is not '[p]lenary' if the Legislature's power to include app-based drivers in the workers' compensation program is limited by initiative statute." (AA 889.)

a. *IEP* made clear that "plenary" and "unlimited" do not mean "exclusive," and the Constitution's references to the Legislature's "plenary power" include the People acting by initiative. (38 Cal.4th at 1035–1037.) "Plenary authority and exclusive authority are not synonymous concepts." (*Kempton*, 40 Cal.4th at 1042.) Plenary means "complete" and "unqualified," "not exclusive." (*IEP*, 38 Cal.4th at 1035 [citing Black's Law Dictionary 1038 (5th ed. 1979)]; see also *Consulting Engineers & Land Surveyors of California, Inc. v. Professional Engineers in California Government* (2007) 42 Cal.4th 578, 587 (*CELSOC*) [rejecting argument that "erroneously assumes" plenary and exclusive legislative powers are synonymous].)

Indeed, article XIV's plenary-and-unlimited-power provision is indistinguishable from the "analogous language" of article XII that the Supreme Court analyzed in *IEP* (*id.* at 1036, fn. 4):

> *IEP*: "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.)
>
> Here: "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. IV, § 4.)

IEP held that such language does not "preclude the people, through their exercise of the initiative process," from exercising the power it vests in the Legislature. (38 Cal.4th at 1043–1044.) If "the Legislature has plenary authority [under a constitutional

provision], then so, too, does the electorate." (*Kempton*, 40 Cal.4th at 1043.) Thus, in "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 enact measures that affect workers' compensation.

b. Article XIV § 4's history confirms that it does not stand in the way of initiatives affecting workers' compensation. The purpose of the "plenary power" language in article XIV § 4 was simply to protect the workers' compensation system against *Lochner*-era constitutional challenges—not to give the Legislature exclusive power at the expense of the People. Indeed, just a few years after article XIV was adopted, the Supreme Court held that the word "plenary" in that provision 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; it "is merely surplus verbiage" that "was designed to give authority for the legislation already enacted and to sanction the plan then in existence." (*Yosemite Lumber Co. v. Industrial Acc. Com.* (1922) 187 Cal. 774, 780, 782.)

That is why the only two ballot arguments in support of article XIV § 4 focused on ensuring the constitutionality of workers' compensation, without ever suggesting that the voters would be abrogating their own initiative power. (AA 796 [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"].)

The same is true of the contemporaneous press coverage of the amendment. None of at least seven major California newspapers once indicated that a purpose of the amendment was to limit the initiative power. (See, e.g., AA 798 [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 the relevant history, the Supreme Court concluded that article XIV § 4's "sole purpose" was "removing all doubts as to the constitutionality of the then existing workers' compensation statutes." (*Mathews*, 6 Cal.3d at 733–735 & fn. 11; AA 766 [leading workers' compensation treatise confirming that article XIV § 4 was proposed "to assure the validity of workers' compensation legislation"].) The trial court erred in concluding that article XIV's plenary-and-unlimited-power language limits the People's initiative power.

2. The Constitution's Grant of "Plenary Power" to the Legislature in a Particular Subject Area Does Not Conflict with the Constitution's Procedural Requirements for Legislation

The trial court reasoned that article XIV's "grant of plenary power to the Legislature conflicts with a limitation on its power to amend an initiative statute under Article II Section 10." (AA 889.) But article XIV and article II are easily harmonized: Article XIV

clarifies the existence and scope of substantive legislative power over workers' compensation, and article II provides and safeguards a means for the People to exercise its legislative power via initiative. The trial court's contrary reading makes no sense; it would mean that article II § 10(c) implicitly repeals the People's power to legislate about workers' compensation, but that provision comes nowhere near overcoming the strong presumption against implied repeals. (*Bd. of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868–869.) And even if there were a conflict between articles XIV and II, the People's power to legislate by initiative would prevail.

a. 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. To safeguard the voters' statutes from interference by the Legislature, the Constitution requires that any effort by the Legislature to "amend or repeal an initiative statute" must gain the assent of the People either (1) "by another statute that becomes effective only when approved by the electors," or (2) if "the initiative statute permits amendment or repeal," by whatever mechanism the initiative statute provides. (*Id.*, art. II, § 10(c).)

In deeming article II to "conflict" with article XIV's reference to plenary power (and thus construing the Constitution to prohibit initiatives affecting workers' compensation) (AA 889), the trial court misunderstood the relationship between article II and article XIV. Article XIV merely clarifies the constitutional authority to enact workers' compensation laws. (See pp. 18–20, 35–36, *ante*.) Its recognition of "plenary power" substantively protects workers' compensation laws from *Lochner*-era constitutional challenges. It does not abrogate the *procedural* requirements of the lawmaking process.

For example, bills must be presented to the Governor for approval before they become law. (CAL. CONST., art. IV, § 10(a).) This requirement does not conflict with article XIV's clarification that "[t]he Legislature is hereby expressly vested with plenary power, *unlimited by any provision of this Constitution*," to create a workers' compensation system. (*Id.*, art. XIV, § 4, italics added.)

The Supreme Court expressly confirmed this in *IEP*, where it noted that "expansive[ly]" construing the phrase "plenary power, unlimited by any provision of the Constitution" to preclude initiatives "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." (38 Cal.4th at 1036.) There is "no basis whatsoever in the California Constitution, however, 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; see, e.g., Sen. Bill. No. 1717, vetoed by Governor, Sept. 30, 2009 [bill to increase workers' compensation benefits]; Sen Bill. No. 320, vetoed by Governor, Sept. 28, 1999 [bill that, among other things, would have expanded workers' compensation benefits and altered methods for determining the entitlement to such benefits].)

So too here. Article II's requirement that legislation amending or repealing an initiative be subject to voter approval does not conflict with the Legislature's "plenary" power over workers' compensation. Like presentment to the Governor, article II simply sets forth procedures that govern such lawmaking if an initiative has been passed. The "conflict" that the trial court perceived between articles XIV and II has even less grounding than the notion of a conflict between article XIV and the gubernatorial veto power. Article II is designed to *protect* the voters' inherent power to make policy choices through the initiative process.

Article XIV does nothing to disturb the article II procedures that make sure that "[t]he people's reserved power of initiative is greater than the power of the legislative body" because, "unless an initiative measure expressly provides otherwise, an initiative measure may be amended or repealed only by the electorate." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 715–716, citations omitted.) By finding a conflict between easily reconciled provisions, the trial court flouted the "strong" presumption against implied repeal and its duty to "harmonize" provisions of the Constitution. (*Lonergan*,

27 Cal.3d at 868–869.) And in doing so, the trial court inverted the basic constitutional principle that the "people's direct legislative power is greater than the more indirect exercise of that power by intermediaries such as elected representatives." (Karl Manheim & Edward P. Howard, *A Structural Theory of the Initiative Power in California* (1998) 31 Loyola L.A. L.Rev. 1165, 1198.)

b. Even if there were a conflict between the two constitutional provisions, the trial court erred in concluding that article XIV would trump article II and invalidate initiatives that the People have enacted affecting workers' compensation. The trial court's reasoning hinges on the fact that the People enshrined the power to enact initiative statutes in the Constitution in 1911. The trial court concluded that, because article XIV came later (in 1918), the People silently repealed their own power to enact legislation concerning workers' compensation. (AA 889.)

The trial court's reasoning fails on its own terms: Even under its erroneous assumption that a later-added constitutional provision overrides a separate earlier-enacted provision by silent implication, the court *still* would have reached the wrong result because the most recently enacted of the relevant constitutional provisions is the one enabling the Legislature to amend an initiative, which was not enacted until 1946. That year, the People approved what is now article II § 10(c) as the constitutional mechanism by which the Legislature can amend initiative statutes—namely, that the Legislature may pass a bill that takes effect only once the voters approve. (Proposition 12 (1946); see *People v. Kelly* (2010) 47 Cal.4th 1008, 1038 [noting that the

current language of section 10(c) was designed to "preserve to the people their primary right to approve or reject all" amendments of initiatives and protect them from interference by the Legislature].) Before then, the Legislature lacked any procedural pathway to amend initiatives at all. (*Kelly*, 47 Cal.4th at 1035–1036.) The ballot argument in favor of Proposition 12 made absolutely explicit the continued primacy of the People's power in all areas: It stated that the amendment would provide an orderly and responsible way for the Legislature to amend initiative statutes, while "preserv[ing] to the people their primary right to approve or reject *all* such measures." (*Id.* at 1038, quoting Argument in Favor of Senate Constitutional Amendment No. 22, Nov. 5, 1946, italics added.)

Thus, even if there were a conflict between article XIV § 4 and article II § 10(c) (there is not), the latter's history shows that it is the initiative power that limits the Legislature's authority, not the other way around. That is particularly so given the principle that "any reasonable doubts" must be resolved "in favor of [the] exercise" of the initiative power. (*Eu*, 54 Cal.3d at 501.) But there is no conflict; the Legislature must present a bill to the voters if it wishes to amend Proposition 22. That is the way to harmonize article II and article XIV—not to eliminate the People's right of initiative in this area.

3. It Does Not Matter under Article XIV Whether an Initiative Expands or Contracts the Workers' Compensation System

Perhaps sensing the dramatic and sweeping implications of their theory, Petitioners suggested below that the ability to exercise the initiative power under article XIV is a one-way ratchet—that the People have the power to expand the workers' compensation system to cover additional workers, but not the power to exclude from the system workers that the Legislature had previously included. (AA 610; AA 854.) The trial court properly declined to adopt that argument.

To begin, article XIV does not prescribe any substantive rules for workers' compensation—e.g., any minimum or maximum number of workers who must be covered by the workers' compensation system. Instead, the "right to workers' compensation benefits is wholly statutory." (*Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002.) As the Attorney General explained below, article XIV allows (but does not require) the Legislature to create a workers' compensation system for "any or all" workers. (CAL. CONST., art. XIV, § 4; see AA 719–720.) The Legislature has "[w]ide discretion" to change the "classification" of which workers the system would cover. (*Mathews*, 6 Cal.3d at 739.) Indeed, by altering the test for worker classification, the Legislature "has excluded certain classes of persons from coverage" throughout its history, with the downstream consequence that some workers are added to or

removed from the workers' compensation system. (*Ibid.*; accord AA 887.)

For example, the Second Appellate District has upheld the Legislature's removal of a particular category of workers (student athletes) from the general workers' compensation scheme, confirming that a worker does "not have a vested right in employee status" and that the Legislature may change which workers qualify as employees. (*Graczyk,* 184 Cal.App.3d at 1007.) Similarly, in *Wal-Mart Stores v. Workers Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442–1443 & fn. 12, the Fourth Appellate District confirmed that the Legislature has the "power to exclude certain workers"—including seasonal workers, students, and entertainers—from the system. And this Court has specifically rejected the notion that article XIV § 4 created a judicially enforceable right to a certain type or scope of workers' compensation protection. (*Bautista v. State* (2011) 201 Cal.App.4th 716, 721, 723.)

The People necessarily have the same broad discretion as the Legislature to add or remove workers from the workers' compensation system. Again, as the Supreme Court has put it, "the power of the people [to enact statutes] through the statutory initiative is coextensive with the power of the Legislature." (*IEP*, 38 Cal.4th at 1032.) Whether the People or the Legislature amends worker classification rules, there is no constitutional difference between a law expanding worker coverage under article XIV and one contracting coverage.

Unable to find support for their theory in the text of article

XIV, the Legislature's long practice of removing workers from the system, or the line of unbroken precedent upholding the same, Petitioners relied instead on a footnote in *IEP* describing what the Supreme Court was *not* deciding in that case. The footnote stated that the Court "ha[d] no occasion … to consider whether an initiative measure relating to the [Public Utilities Commission] 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." (38 Cal.4th at 1044, fn. 9.) Petitioners construed that footnote as barring initiatives that reduce the number of workers eligible for workers' compensation when compared to prior laws enacted by the Legislature.

That argument cannot be reconciled with *Kennedy Wholesale*, *Kempton*, or *CELSOC*, let alone *IEP* itself. Under Petitioners' theory, the Legislature prevails when its policy preferences differ from those of the People. But the very purpose of the initiative power is to permit the People to override the Legislature in response to such a policy conflict. 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 Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1035.) 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."

At any rate, this case does not present the hypothetical

situation described in the *IEP* footnote. Under article XII, the PUC is itself vested with constitutional powers, and legislation can only "confer *additional* authority and jurisdiction upon the commission." (CAL. CONST., art. XII, § 5, italics added.) There is no similar one-way ratchet in article XIV. The Constitution *authorizes* a workers' compensation system, but it does not *require* any particular system and certainly does not require any particular group of workers to be classified as employees. Nor does it specify that the Legislature can only expand the workers' compensation system.

In short, the Legislature plainly could have enacted reforms for app-based drivers that do not include them in the workers' compensation system for employees. But so can the People. Nothing in *IEP* footnote 9 suggests that the People lack the power to make the same kinds of public policy choices as the Legislature.

II. The Trial Court Erred in Holding That the Amendment Provisions of Proposition 22 Violate the Separation of Powers

As a constitutional baseline, article II prohibits the Legislature from "amend[ing] or repeal[ing] an initiative statute" without the People's subsequent consent. (CAL. CONST., art. II, § 10(c).) Proposition 22 *exceeds* this baseline by authorizing the Legislature to amend the initiative on its own, so long as the amendment secures a seven-eighths vote of the legislators and is consistent with the initiative's purposes. (Bus. & Prof. Code, § 7465(a).) Proposition 22 also states that a statute authorizing entities "to represent the interest of app-based drivers in

connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions, constitutes an amendment of this chapter and must be enacted in compliance with the procedures governing amendments consistent with the purposes of this chapter as set forth in subdivisions (a) and (b)." (*Id.*, § 7465(c)(4).)

In the trial court, Petitioners cast this statement from Proposition 22 as something bold and aberrant—an attempt to "re-define" the Constitution itself. (AA 616.) The trial court accepted this argument, holding that section 7465(c)(4) violates the separation of powers by purporting "to limit the Legislature's ability to pass future legislation that does not constitute an 'amendment' under Article II." (AA 895.)

The trial court erred. Because the Legislature has not yet enacted any legislation plausibly covered by section 7465(c)(4), Petitioners' challenge is not ripe. At any rate, section 7465(c)(4) does not violate the separation of powers, because the provision does not restrict future legislation or control any court's determination of whether such legislation would constitute an "amendment." Instead, section 7465(c)(4) is a non-binding statement of legislative intent similar to provisions often enacted by the Legislature. Such expressions by lawmakers are constitutional and do not preclude courts from independently deciding whether a subsequent statute amends an initiative. (See, e.g., *Amwest*, 11 Cal.4th at 1250–1251.) At the very least, Petitioners cannot show (as they must) that this provision is facially invalid in all of its applications.

A. The Challenge to Section 7465(c)(4) Is Not Ripe

The trial court held that section 7465(c)(4) violates the separation of powers by restricting future legislation on collective bargaining and by taking away from the courts the judicial function of interpreting whether legislation constitutes an amendment of Proposition 22. But as the Attorney General pointed out below (AA 722), the Legislature has not proposed—much less enacted—any statute arguably covered by the terms of this provision. And neither Petitioners nor the trial court identified a single case where a court decided whether a hypothetical future statute would amend an already-enacted initiative. Petitioners' facial challenge to section 7465(c)(4) is purely academic and thus unripe.

Ripeness is a cornerstone of justiciability that reinforces "the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion." (*Pacific Legal Found. v. California Coastal Comm'n* (1982) 33 Cal.3d 158, 170.) This doctrine forecloses "courts from issuing purely advisory opinions" on general legal issues, requiring instead "the context of an actual set of facts so that the issues will be framed with sufficient definiteness to make a decree finally disposing of the controversy." (*Ibid.*) This rule is not optional or merely prudential. "Courts simply may not render advisory opinions on controversies" that plaintiffs fear might arise, "but do not presently exist." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 78.)

Petitioners' challenge to section 7465(c)(4) is not ripe because the Legislature has not enacted a statute that plausibly amends Proposition 22. Only if that happens would this claim be "sufficiently concrete to allow judicial resolution." (*Pacific Legal Found.*, 33 Cal.3d at 170.) That is because the test for an amendment entails a concrete assessment of whether the statute at issue "changes [the] scope and effect" of the initiative. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1486.) One can hardly answer this "question of statutory interpretation" without a statute to interpret. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.)

The Third Appellate District rightly dismissed an analogous claim on ripeness grounds. In *Teachers' Retirement Board v. Genest* (2007) 154 Cal.App.4th 1012, litigants sought a declaration on "the extent to which the Legislature may legislate" with respect to a retirement system "after voter approval of Proposition 162." (*Id.* at 1043.) The Court of Appeal "decline[d] to issue an advisory opinion to forestall hypothetical events that may never occur." (*Id.* at 1044.)

Here, too, Petitioners present "nothing more than a request for an advisory opinion" about statutes the Legislature might consider in the future. (*Id.* at 1043.) It is true that Proposition 22 itself "is passed and in effect." (AA 891.) But contrary to the trial court's conclusion, Petitioners' claim still requires "speculat[ion] on the resolution of hypothetical situations" in which section 7465(c)(4) might be applied. (*Stewart*, 126 Cal.App.4th at 64.) The academic nature of the claim precludes a "sufficiently concrete"

controversy from existing here. (*Pacific Legal Found.*, 33 Cal.3d at 170.)

B. Section 7465(c)(4) Does Not Violate the Separation of Powers

In addition to its lack of ripeness, Petitioners' challenge lacks merit because section 7465(c)(4) does not violate the separation of powers. The provision is a non-binding expression of the voters' views on potential amendments to Proposition 22. Even if section 7465(c)(4) were binding, the facial claim would still fail because the challenged provision is indisputably constitutional in at least some—if not all—applications.

1. Article II Allows Voters to Establish Rules Regarding Legislative Amendment of Initiatives

Article II provides that "[t]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval." (CAL. CONST., art. II, § 10(c).) The Legislature can return to the People to seek permission to amend their initiative, or the People can grant that permission to the Legislature in advance. Either way, the final say rests with the voters themselves.

Courts have held that amendments subject to article II § 10 include any statute that "defeat[s] the purposes" of an initiative (*Howard Jarvis Taxpayer Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 125) or "changes its scope and effect" (*Quackenbush*, 64 Cal.App.4th at 1486), as well as any statute that "prohibits what

the initiative authorizes, or authorizes what the initiative prohibits" (*Pearson*, 48 Cal.4th at 571). But the voters can authorize future amendments in the initiative itself. The voters possess "absolute" power to decide "whether or not the Legislature can amend or repeal" the initiative "subject to conditions attached by the voters." (*Amwest*, 11 Cal.4th at 1251, italics deleted.) Although an initiative need not grant this additional authority, most initiatives permit legislative amendment—typically on the condition that the Legislature can amend the initiative "only by a supermajority, and only to further the purposes of the initiative." (*Kelly*, 47 Cal.4th at 1042 & fn. 59, citation omitted.)

Proposition 22 follows this well-worn path. Under article II, the People could have chosen to forbid all legislative amendments, but they instead authorized the Legislature to amend Proposition 22 by a seven-eighths vote, "provided that the statute is consistent with, and furthers the purpose of," the initiative. (Bus. & Prof. Code, § 7465(a).) Courts have repeatedly upheld such "common" procedural conditions on amendments. (*Amwest*, 11 Cal.4th at 1251; see, e.g., *People v. Cortez* (1992) 6 Cal.App.4th 1202, 1211.) The voters, after all, can attach "whatever conditions" they wish "to the Legislature's amendatory powers." (*Pearson*, 48 Cal.4th at 568.) In the absence of section 7465(a), the Legislature could not amend the initiative at all—not for collective bargaining or for anything else—without submitting the bill to the electorate for approval.

2. Section 7465(c)(4) Does Not Restrict Future Legislation

As with any other initiative statute, the legislative landscape after Proposition 22 is that amendments are prohibited by the Constitution (art. II, § 10(c)) except where authorized by the voters in the initiative itself (Bus. & Prof. Code, § 7465(a)). But the Legislature, of course, can enact statutes that do *not* amend the initiative without clearing the additional hurdles of article II or section 7465(a). In Proposition 22, the People offered their view that a narrow category of future legislation would fall on the amendment side of that dividing line. Specifically, they stated that legislation authorizing collective bargaining "in connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions, constitutes an amendment." (*Id.*, § 7465(c)(4).)

The voters had good reason to include this statement. At its most basic level, Proposition 22 enshrined the independence and flexible working conditions of app-based drivers while conferring compensation, benefits, and working condition protections not ordinarily guaranteed to independent contractors. A subsequent attempt by the Legislature to authorize or mandate collective bargaining regarding those *very same subjects* governed by Proposition 22 could change the measure's "scope and effect" and undermine the regulatory framework chosen by the voters. (*Quackenbush*, 64 Cal.App.4th at 1486.) Such a bill would "prohibit[] what the initiative authorizes" and amount to a revision

of the drivers' status under Proposition 22. (*Pearson*, 48 Cal.4th at 571.)

The trial court's treatment of this issue was puzzling. On the one hand, it properly rejected Petitioners' argument that section 7465(c)(4) is "an attempt to change the definition of the term 'amendment' as used in" article II. (AA 892.) But its decision failed to follow this recognition to its logical conclusion—namely, rejecting Petitioners' legal challenge. Instead, three pages later, the trial court effectively held the opposite of what it initially recognized: It reasoned that section 7465(c)(4) "unconstitutionally purports to limit the Legislature's ability to pass future legislation that does not constitute an 'amendment.'" (AA 895.)

The trial court had it right the first time. Proposition 22 does not impair the Legislature's ability to enact non-amendatory statutes or the judiciary's ability to say what the law is. The People expressed their view that statutes authorizing collective bargaining for app-based drivers on the same issues addressed in Proposition 22 would amend their initiative. A court may decide that the voters' perspective merits "due consideration"—just as courts consider "the Legislature's expressed views on the prior import of its statutes." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.) But such a precatory declaration is "neither binding nor conclusive in construing the statute." (*Id.*) At the end of the day, a court in a future case will exercise its judicial power in deciding whether the statute at issue "actually amends" the provisions of Proposition 22. (*Quackenbush*, 64 Cal.App.4th at 1484.)

In much the same way, the Legislature frequently issues legislative declarations that a statute constitutes a permissible amendment of an initiative. This common practice has never been thought to be problematic. Rather than invalidate such legislative statements for invading the province of the Judiciary, courts give a measure of deference to the Legislature's view.

In *Amwest*, for example, the Legislature enacted a provision stating that its statute "furthers the purpose of Proposition 103 by clarifying the applicability of the proposition" to a class of insurance. (11 Cal.4th at 1260.) The Supreme Court gave due consideration to the Legislature's position that the statute clarified the initiative, ultimately concluding that position did "not withstand scrutiny" on the merits. (*Id.* at 1260–1261.) But at no point did the Supreme Court suggest that the Legislature violated the separation of powers by expressing an opinion on the subject.

Likewise, in *Quackenbush*, the court considered a legislative provision stating that a statute was consistent with the purposes of the amended initiative. (64 Cal.App.4th at 1481 ["The Legislature finds and declares that this statute furthers the purpose of Proposition 103."], italics removed.) The Court of Appeal treated the provision as neither conclusive nor objectionable, instead evaluating for itself whether the statute, "by any reasonable construction," "could be said to further purposes of that Proposition." (*Id.* at 1490.)

Section 7465(c)(4) mirrors these types of precatory legislative declarations. And it would make no sense to say that the Constitution allows the Legislature to express its view on

permissible amendments while silencing the voters on the same issue. The People are both the original and the ultimate source of legislative power, having "reserved [it] to themselves as well as having granted it to the Legislature." (*Fair Pol. Practices Comm'n*, 25 Cal.3d at 42.)

Additionally, two canons of constitutional avoidance compel the interpretation that section 7465(c)(4) preserves the courts' authority to decide whether future statutes qualify as an amendment of Proposition 22. The first is specific to initiatives: Courts "jealously guard the precious initiative power" by upholding initiatives "unless their unconstitutionality clearly, positively, and unmistakably appears." (*Eu*, 54 Cal.3d at 501.) The second is specific to judicial power: Courts should construe legislation "strictly against the impairment of constitutional jurisdiction." (*Cal. Redev. Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253.) These two canons instruct that, if necessary to preserve the initiative, section 7465(c)(4) should be interpreted as a valid expression of the voters' legislative intent, not as an unconstitutional trespass on courts' interpretive authority.

Ironically, the trial court's interpretation could make it even more difficult for the Legislature to amend initiatives going forward—the exact opposite of what the court apparently intended. The People were not required to permit the Legislature to amend Proposition 22 under any conditions. (See *Amwest*, 11 Cal.4th at 1251.) If the Court prohibits voters from even expressing their views on the types of legislation that would be subject to an initiative's amendment process, those who draft

initiatives in the future, and the voters who vote on those initiatives, may not leave the door open for amendments at all. The trial court's incorrect reasoning could thus have "the ironic and unfortunate consequence of causing the drafters of future initiatives to hesitate to grant even a limited authority to the Legislature to amend those initiatives." (*Id.* at 1256.)

3. The Trial Court Misapplied the Standards for Facial Challenges

The trial court also contravened the well-settled standard for a facial challenge. This Court has aptly called such claims "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [law] would be valid." (*American Civil Rights Foundation v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207, 216, citation omitted.) Despite acknowledging this stringent test, the trial court invalidated section 7465(c)(4) by hypothesizing a single collective-bargaining law that it deemed consistent with the independent status of app-based drivers. (AA 891, 895.) This inverts the proper standard of review and was error as a matter of law.

a. Under the proper standard, section 7465(c)(4) easily survives a facial challenge. That is because, even if the provision bound courts to treat future app-based-driver collective-bargaining statutes as amendments, the provision is constitutional in at least some of its applications—for example, with regard to any amendment that would "take[] away from rights granted" by Proposition 22. (*Kelly*, 47 Cal.4th at 1043.)

As the trial court recognized (AA 894), a statute that "imposes unequal regulatory burdens upon app-based drivers based on their classification status" (Bus. & Prof. Code, § 7465(c)(3)) would have precisely that effect, and so treating such a statute as an amendment would plainly be permissible.

Similarly, legislation establishing collective bargaining for app-based drivers over benefits and working conditions could "add[] or tak[e] from" the rights conferred by Proposition 22. (*People v. Cooper* (2002) 27 Cal.4th 38, 44.) Take, for example, a statute that authorized mandatory collective bargaining over the minimum number of hours an app-based driver must work. (See *Chamber of Commerce of the United States of America v. City of Seattle* (9th Cir. 2018) 890 F.3d 769, 778.) Such legislation would amend Proposition 22 by taking away from "the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours." (Bus. & Prof. Code, § 7450(b).) So too, a statute that authorized a collective-bargaining unit to engage in the common practices of setting hours or prioritizing workers by seniority (see, e.g., *Trans World Airlines, Inc. v. Hardison* (1977) 432 U.S. 63, 79; *Clarett v. National Football League* (2d Cir. 2004) 369 F.3d 124, 139) would restrict the independent status created by the voters.

In short, "the Legislature cannot indirectly accomplish … what it cannot accomplish directly" by amending the initiative itself. (*Quackenbush*, 64 Cal.App.4th at 1487.) Any other approach would allow the Legislature to thwart a comprehensive reform that the People enacted through an initiative, thereby

upsetting the voters' carefully calibrated compromises. The Constitution's limits on legislative amendments thus sustain section 7465(c)(4) in some (if not all) of its applications.

In the trial court, Petitioners noted that Proposition 22 lacks other provisions explicitly forbidding collective bargaining. But it has never been the test that a statute must "literally amend" an initiative to constitute an amendment. (*Kelly*, 47 Cal.4th at 1014.) *Kelly* demonstrates this principle. There, the Legislature enacted quantity limits on marijuana possession following an initiative legalizing medical marijuana. (*Id.* at 1027–1028.) The voters had not explicitly addressed quantities, but they had authorized possession when "'reasonably related to the patient's current medical needs.'" (*Ibid.*) By imposing numeric caps to supplement a qualitative standard that lacked "any specific limits," the Legislature amended the initiative. (*Id.* at 1043.)

Here, Proposition 22 sets benefits and working conditions on an industry-wide level while preserving independence and flexibility for app-based drivers. Legislative compulsion of collective bargaining on the same issues would amend the policy solution adopted by the voters under at least some circumstances.

b. Even if Petitioners were to prevail on their facial claim, they would be entitled at most to a declaration that section 7465(c)(4) is unconstitutional. The rest of Proposition 22 would remain operative. As the trial court correctly recognized (AA 895), section 7465(c)(4) is severable from the remainder of Proposition 22. (Bus. & Prof. Code, § 7467(a).) This severability provision must be given effect because subdivision (c)(4) "can be

separated grammatically, functionally, and volitionally." (*Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, 585–586.)

III. Proposition 22 Enacts Comprehensive Reform on a Single Subject

The trial court also erred in ruling that Proposition 22 violates the single-subject rule, reasoning that section 7465(c)(4) is "utterly unrelated" to the court's unduly narrow articulation of the initiative's "common purpose." (AA 895–896.) First, Proposition 22 serves a common purpose that is broad enough to allow comprehensive reform but is not excessively general: comprehensively reforming the labor relationship between app-based drivers and network companies. Second, Proposition 22's provisions—including the amendment provision addressing collective bargaining—have a "reasonable and common sense relationship" to this purpose. (*Briggs*, 3 Cal.5th at 828–829.) Proposition 22 thus satisfies the single-subject rule's "accommodating and lenient" standards. (*Id.* at 829.)

A. Proposition 22's Provisions All Serve Its Single Common Purpose

The Constitution requires both the Legislature and the People to legislate "one subject" at a time. (CAL. CONST., art. IV, § 9; art. II, § 8(d).) This "single-subject" rule is satisfied when "challenged provisions meet the test of being *reasonably germane* to a common theme, purpose, or subject." (*Brown*, 63 Cal.4th at 350, italics added.) The provisions need not "effectively interlock in a functional relationship" (*Briggs*, 3 Cal.5th at 828); rather, they

need only be "auxiliary to and promotive of [the initiative's] main purpose" (*Fair Pol. Practices Comm'n*, 25 Cal.3d at 39). Each provision need only "relate generally" to the same subject, or "at least arguably will help to achieve the [initiative's] goal." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 842.) Courts thus strike down ballot initiatives only in rare cases where the initiatives "contain[ed] unduly diverse or extensive provisions bearing *no* reasonable relationship to each other or to the general object which is sought to be promoted." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253, italics added.)

This lenient standard gives effect to the principle that "the initiative process occupies an important and favored status in the California constitutional scheme." (*Briggs*, 3 Cal.5th at 828; *see* pp. 17–18, 30–32, *ante*.) As the Supreme Court instructed, courts may not apply the single-subject rule in a "narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Ibid.*) Courts should "not consider or weigh the economic or social wisdom or general propriety of the initiative." (*Cal. Fam. Bioethics Council, LLC v. Cal. Inst. for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1338.) Nor should they "attempt[] to predict whether each section actually will further the initiative's purpose." (*Calfarm*, 48 Cal.3d at 841.)

Those principles make clear that Proposition 22 is on firm constitutional footing. Proposition 22 implements "comprehensive reform" regarding the relationship between app-based platforms and drivers. Its unifying goal is to establish a regulatory

framework that preserves driver independence while affording drivers many protections and benefits traditionally reserved for employees. (See Bus. & Prof. Code, §§ 7449, 7450(a)–(d).) In striking this balance, Proposition 22 establishes an innovative "third way" to classify and regulate workers. To protect this new regulatory framework, section 7465(c)(4) reasonably provides that the Legislature may amend Proposition 22 by authorizing collective bargaining for app-based drivers with respect to the substantive provisions in the initiative only if (1) the legislation is "consistent with the purposes" of the initiative, and (2) the legislation receives approval from seven-eighths of the Legislature.

Proposition 22's purpose and coverage are of similar breadth to those of statutes that have previously survived a single-subject challenge. (See, e.g., *Briggs*, 3 Cal.5th at 831 [making the entire system of capital punishment more efficient]; *Manduley v. Superior Court* (2007) 27 Cal.4th 537 [addressing violent crime committed by juveniles and gangs]; *Eu*, 54 Cal.3d at 512 [incumbency reform]; *League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 666 [balancing the budget].) Both standing alone and when compared to these other initiatives, Proposition 22's subject is hardly "one of excessive generality." (*San Joaquin Helicopters v. Dept. of Forestry* (2003) 110 Cal.App.4th 1549, 1558.)

Courts regularly uphold initiative statutes that contain a variety of provisions, so long as they arguably serve a common goal. (See, e.g., *Briggs*, 3 Cal.5th at 831 [provisions requiring

prisoners to work and pay restitution, affording protections to medical staff involved in executions, and abolishing Habeas Corpus Resource Center's board of directors were reasonably germane to making capital punishment more efficient]; *Manduley*, 27 Cal.4th at 578–579 [provisions that had "collateral" effects on non-gang adult offenders were reasonably germane to addressing violent crime committed by juveniles and gangs]; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 347–348 ["disparate" provisions (i.e., reforms of speedy trial rights, hearsay, and felony murder) were reasonably germane to promoting "the rights of actual and potential crime victims"].)

Similarly here, Proposition 22's provisions serve the central goal of establishing a regulatory scheme that maintains driver independence while guaranteeing certain benefits. The provisions may address different aspects of that regulatory scheme—such as classification, pay, the potential impact of unequal regulatory burdens, and collective bargaining. But they all are germane to the same subject.

B. The Trial Court's Single-Subject Ruling Was Erroneous

When the trial court determined that section 7465(c)(4) causes Proposition 22 to violate the single-subject rule, it committed two errors. First, its analysis improperly focused on the initiative's individual elements, failing to recognize that those elements collectively serve a single, overall purpose. Second, it incorrectly concluded that the amendment provision regarding

collective bargaining is not reasonably related to the remainder of Proposition 22.

1. The Trial Court Failed to Consider Proposition 22's Overall Purpose

In holding that Proposition 22 violated the single-subject rule, the trial court failed to follow established standards for defining an initiative's purpose. Courts must "identify the lowest common denominator of the various provisions of the initiative, i.e., the most narrowly defined object or purpose which nevertheless is sufficiently broad enough to encompass all such provisions." (*League of Women Voters*, 7 Cal.App.4th at 659.) If the law were otherwise, the People would be unable to legislate comprehensively and effectively. (See, e.g., *Briggs*, 3 Cal.5th at 831 [using initiative's various stated goals, including requiring payment of restitution and eliminating special housing for death row inmates, to define its overall purpose as "comprehensive criminal justice reform"]; *Kennedy Wholesale*, 53 Cal.3d at 253 [finding that initiative's primary objective was "to reduce the economic costs of tobacco use in California" where initiative also stated goals such as treating people suffering from tobacco-related diseases and reducing tobacco use among children].)

But the trial court did not acknowledge that Proposition 22 aims to enact a new regulatory framework for app-based drivers. Instead, the court defined Proposition 22's purpose in a piecemeal way: It listed out the subsidiary goals of each provision, but never acknowledged Proposition 22's overarching goal of implementing a new labor regulatory system. (AA 895–896.) This method for

defining an initiative's common purpose contradicts precedent and undermines the People's ability to enact comprehensive reforms.

In particular, the trial court failed to recognize that section 7465(c)(4), like all of Proposition 22's provisions, is addressed to comprehensive reform of the regulation of app-based drivers. Section 7465(c)(4) states that any statute providing for collective bargaining with respect to "drivers' compensation, benefits, or working conditions" must meet certain requirements to be properly enacted. Compensation, benefits, and working conditions are the same topics common to the rest of Proposition 22. With respect to compensation, section 7450(c) lists a minimum compensation level as a benefit afforded by the statute, and section 7453 "establishes a guaranteed minimum level of compensation for app-based drivers." Regarding driver benefits, section 7450(c) states that Proposition 22 aims to require network companies "to offer new protections and benefits for … drivers," and other sections describe those benefits. (See Bus. & Prof. Code, §§ 7454–7455.) And several provisions address drivers' working conditions, including section 7451, which conditions independent contractor classification on driver flexibility and independence; sections 7456 and 7457, which provide for antidiscrimination measures and sexual harassment prevention; and section 7461, which provides for driver rest periods.

Section 7465(c)(4) therefore addresses precisely this same subject matter—it is explicitly tied to drivers' compensation, benefits, and working conditions. The trial court itself expressly acknowledged this point. (See AA 896 [stating that section

7465(c)(4)'s collective-bargaining provision "is related to Proposition 22's subject"].) But, confusingly, the court then went on to conclude that section 7465(c)(4) "is utterly *unrelated* to its stated common purpose." (AA 896, italics added.)

If the trial court meant to draw a distinction between "subject" and "purpose," that was error as a matter of law. A provision need only be reasonably germane to an initiative's "common theme, *purpose*, *or subject*." (*Brown*, 63 Cal.4th at 350, italics added.) And the court failed to identify any other subject addressed by Proposition 22 or section 7465(c)(4), which undermines any conclusion that Proposition 22 embraces more than one subject. Thus, by the trial court's own reasoning, Proposition 22 satisfies the single-subject rule.

In concluding the opposite and adopting an unduly narrow approach to characterizing an initiative's "subject," the trial court's illogic threatens to undermine the People's ability to enact comprehensive reforms. Indeed, under its reasoning, many comprehensive reform initiatives that survived single-subject challenges in the past would be rendered invalid. These include the Death Penalty Reform and Savings Act of 2016, which sought to make the entire system of capital punishment more efficient; the Political Reform Act of 1990, which sought to limit the powers of incumbency and restore a free and democratic system of fair elections; and the Government Accountability and Taxpayer Protection Act of 1992, which sought to balance the budget. Similar to Proposition 22, each of these initiatives implemented a

variety of provisions to achieve broad reform, but could fail a single-subject challenge under the trial court's flawed analysis.

2. Section 7465(c)(4) Is Reasonably Germane to Proposition 22's Common Purpose

Even if it were necessary to demonstrate a common "purpose," separate from a common "subject," section 7465(c)(4) is reasonably germane to Proposition 22's overarching aim. The trial court held that section 7465(c)(4) violates the single-subject rule because—in the court's view—it "does not promote the right to work as an independent contractor, nor does it protect work flexibility, nor does it provide minimum workplace safety and pay standards for those workers." (AA 896.) Supreme Court precedent, however, forbids courts from making their own assessments of whether a given provision will *effectively* further an initiative's purpose. (See *Briggs*, 3 Cal.5th at 828; *Eu*, 54 Cal.3d at 513–514.) The question for the court is merely whether the challenged provision "arguably" furthers the enactment's common purpose. (*Calfarm*, 48 Cal.3d at 842.)

Proposition 22 easily meets this test. It enacts a comprehensive package of regulations regarding compensation, benefits, and working conditions for drivers, while ensuring they retain the flexibility associated with independent contractor status. Whether this Court interprets section 7465(c)(4) as a mere expression of legislative intent or as a binding definition of "amendment" (see Section II, *ante*), the provision is, at *minimum*, "arguably" "auxiliary to and promotive of" this goal. This amendment provision authorizes the Legislature to impose

collective bargaining with respect to drivers' compensation, benefits, and working conditions, so long as certain conditions are met. Thus, the provision is directly and functionally related to the provisions addressing compensation, benefits, and working conditions in Proposition 22 and to the initiative's common purpose of establishing a comprehensive scheme.

Collective bargaining could lead to an alteration of Proposition 22's carefully tailored balance by redefining the benefits afforded to drivers—benefits that represent the People's policy choices. By authorizing the Legislature to amend Proposition 22 to require collective bargaining only when it furthers the initiative's goals and has supermajority support, section 7465(c)(4) ensures that the People's will is not easily encroached upon by a Legislature intent on undermining Proposition 22's new regulatory framework and upsetting the balance between flexibility and new driver benefits. Put more simply, section 7465(c)(4) protects Proposition 22 from unchecked legislative interference. In this way, section 7465(c)(4) expressly promotes Proposition 22's goal of establishing a new regulatory framework and easily satisfies the "reasonably germane" standard.

Unlimited power to require collective bargaining could also lead to restrictions on individual drivers' ability to control their work—a consequence inconsistent with Proposition 22's purpose. Thus, by defining the parameters for enacting collective-bargaining legislation, section 7465(c)(4) helps protect drivers' freedom to make certain decisions about their work.

That collective bargaining is not explicitly mentioned in Proposition 22's other provisions does not cause section 7465(c)(4) to violate the single-subject rule. To hold otherwise would contradict the rule that an initiative's provisions need not "interlock in a functional relationship." (*Briggs*, 3 Cal.5th at 828; see *Brosnahan*, 32 Cal.3d at 244–245, 253 [victims' rights initiative did not violate single-subject rule where each provision concerned a separate right not referenced in any other provision].) There is also no requirement that every provision be mentioned in the initiative's statement of findings or purpose, so long as the voters are presented with the entire text of the initiative. (See *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1257 [rejecting claim that initiative violated single-subject rule where its title, introductory section, ballot description, and voter pamphlet arguments did not explicitly reference challenged provision].)

Moreover, collective bargaining has historically been associated only with employee status. (See, e.g., National Labor Relations Act, 29 U.S.C. §§ 152(3), 157 [providing that employees, not independent contractors, have the right to "bargain collectively"]; *Fernandez v. Lawson* (2003) 31 Cal.4th 31, 42 [explaining that collective bargaining is a consequence of employee status].) Indeed, SEIU's very presence here as a petitioner—seeking to invalidate Proposition 22's worker classification regime in general and attacking the amendment provisions in particular—underscores the tension between independent contractor status and collective bargaining. And notably, before

the trial court, Petitioners cited no statute providing independent contractors the right to bargain collectively. Section 7465(c)(4)'s collective-bargaining limitations have a "reasonable and common sense relationship" to preserving drivers' independent contractor status within Proposition 22's new regulatory framework. (*Briggs*, 3 Cal.5th at 828–829.)

C. Voters Were Aware of Proposition 22's Effect on Collective Bargaining

Petitioners argued below that Proposition 22 violates the single-subject rule because voters were unaware of the amendment provision concerning collective bargaining. But this claim of voter confusion is not a basis to invalidate Proposition 22, and Petitioners' argument has no foundation in the record.

Alleged voter confusion is not a legal justification to invalidate an initiative that satisfies the single-subject rule. (*Cal. Gillnetters Assn. v. Dept. of Fish &* Game (1995) 39 Cal.App.4th 1145, 1162.) Courts "ordinarily should assume that the voters who approved a [ballot measure] have voted intelligently upon [it], the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered." (*Brosnahan*, 32 Cal.3d at 252.)

To the extent voter confusion is relevant, Petitioners are flatly wrong to suggest that the amendment provision was hidden from voters in a sea of unrelated provisions. Indeed, not only was the campaign for Proposition 22 marked by robust public debate, but Petitioners themselves prominently aired their concerns specifically with respect to the initiative's potential effect on

collective bargaining. Voters were thus well aware of Proposition 22's potential effects when they voted to enact it.

The campaigns for and against Proposition 22 were well-funded and well-publicized. There was much public discourse surrounding drivers' independent contractor status and the legal changes Proposition 22 would impose should it be passed. (See, e.g., Ballotpedia, California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020) https://tinyurl.com/4p4nfkyu [last visited Feb. 15, 2022] [collecting arguments made for and against Proposition 22 during campaign, listing campaign spending for each side, and summarizing media coverage of Proposition 22 campaign].)

Given the highly public nature of the Proposition 22 campaign, there is no risk that voters were deceived regarding section 7465(c)(4). (See *Amador Valley*, 22 Cal.3d at 231 [That "[t]he measure received as much public attention as any other ballot proposition in recent years … dilute[s] the risk of voter confusion or deception."]; *Watson v. Fair Pol. Practices Comm'n* (1990) 217 Cal.App.3d 1059, 1078 ["In light of the attention that was focused on this initiative … preceding the election, we cannot presume that the people did not know what they were about in approving the measure."].)

First, as discussed above, collective bargaining has long been associated with employee status, so by voting in support of Proposition 22's independent-contractor-based model, voters knowingly authorized limitations on collective bargaining. (See *People v. Valencia* (2017) 3 Cal.5th 347, 420 ["[Courts] presuppose

that the voters, in adopting an initiative, did so being 'aware of existing laws at the time the initiative was enacted.'"].)

Second, and more importantly, Proposition 22's opponents publicly aired their concerns that the law would prevent drivers from collectively bargaining under current California and federal law. (See, e.g., AA 785 ["Proposition 22 would make it almost impossible for workers to have legal protections if they want to collectively bargain."]; AA 788–791 [noting that a vote against Proposition 22 would help drivers create a union].)

The policy arguments for and against collective bargaining and independent contractor status were thoroughly aired leading up to the 2020 election. Petitioners' arguments were available to voters in a variety of forums, and even so, the voters enacted Proposition 22 by a large margin. The court should not interfere when the People knowingly vote to enact their own policy preferences. The trial court erred by invalidating the People's considered judgment.

CONCLUSION

The Constitution permits the People to enact comprehensive reform statutes affecting workers' compensation to the same degree as any other subject matter or policy issue. The People legitimately carried out that initiative power here. The Court should reverse and direct the trial to deny the writ petition.

Dated: February 24, 2022

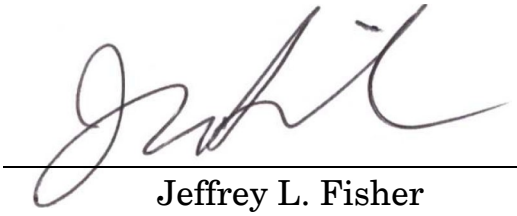
Jeffrey L. Fisher

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

CERTIFICATION OF WORD COUNT

Pursuant to rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that the Intervenors and Appellants' Opening Brief contains 13,909 words, excluding tables and this certificate, according to the word count generated by the computer program used to produce the brief.

February 24, 2022



Jeffrey L. Fisher

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