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, AND SERVICE EMPLOYEES INTERNATIONAL UNION,

Petitioners-Respondents,

v.

STATE OF CALIFORNIA AND KATIE HAGEN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,

Defendants-Appellants.

Alameda County Superior Court, Case No. RG21088725
The Honorable Frank Roesch, Judge

OPENING BRIEF OF DEFENDANTS-APPELLANTS STATE OF CALIFORNIA AND DIRECTOR HAGEN

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APPELLANT/ PETITIONER: State of California, et al. RESPONDENT/ REAL PARTY IN INTEREST: Hector Castellanos, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party *(name)*: Appellants State of California and Director Hagen

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

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(2)		
(3)		
(4)		
(5)		

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Date: November 4, 2021

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INTRODUCTION

This appeal concerns a challenge to a voter-approved ballot initiative, Proposition 22, "the Protect App-Based Drivers and Services Act." Proposition 22 created a new standard for determining whether app-based workers – e.g., drivers and delivery persons providing services via online platforms such as Uber, Lyft, and Doordash – are deemed independent contractors or employees under California law.[1] It was approved by California voters following the passage of Assembly Bill 5 (AB 5), wide-ranging legislation enacted in 2019 to codify a new test for determining, in general, whether a worker is an employee or an independent contractor. (Assem. Bill No. 5 (2019-2020 Reg. Sess.) AB 5 sets forth a presumption that a worker is an employee rather than an independent contractor, a presumption that can be overcome if the hiring entity satisfies the three-part "ABC" test. This distinction is important because individuals deemed employees are entitled to various protections under state law, including, as relevant here, protections afforded by the workers' compensation system.

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[1] The petition defines "app-based drivers" as "drivers who work for transportation and delivery network companies such as Uber, Lyft and DoorDash." (AA [Appellants' Appendix] at 21 ¶ 19; see also Bus. & Prof. Code, § 7463, subd. (a) [defining app-based driver as "an individual who is a DNC [delivery network company] courier, TNC [transportation network company] driver, or TCP [transportation charter permit] driver or permit holder; and for whom the conditions set forth in subdivisions (a) to (d), inclusive, of Section 7451 are satisfied."].)

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After AB 5 was enacted, Proposition 22 was qualified for the ballot. This measure creates a separate standard for determining employee status in the app-based industry, providing that workers are deemed independent contractors assuming certain conditions are met, and provides alternative protections. The voters approved Proposition 22 at the November 2020 election.

Subsequently, Petitioners Hector Castellanos *et al.* challenged the measure, claiming that it violates various provisions of the California Constitution. The trial court agreed, holding that Proposition 22 violates three different provisions of California's Constitution – article XIV, § 4 (which confers "plenary power" on the Legislature "to create, and enforce a complete system of workers' compensation, by appropriate legislation …"), the Separation of Powers clause, and the single-subject rule – and enjoined enforcement of Proposition 22. The trial court erred with respect to each issue.

First, Proposition 22 does not conflict with the Legislature's plenary power to create a system of workers' compensation because it does not seek to modify the workers' compensation system. The initiative merely impacts the threshold classification test to determine whether individuals engaged in a particular type of work are employees or independent contractors. This is well within the authority of the electorate under the initiative power.

Second, the trial court erred in holding that Proposition 22's amendment provisions violate the California Constitution because the conditions for amendment approved by the voters are

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entirely consistent with governing law. Moreover, this challenge is not ripe because Petitioners do not point to any enacted, or even proposed, legislation that purportedly conflicts with the amendment provisions, and instead rely on hypothetical laws to argue that the challenged provisions are unconstitutional.

Lastly, the trial court should have rejected Petitioners' single subject rule challenge because the amendment provisions on which the Petitioners focus are reasonably germane to Proposition 22's overall theme and purpose.

Proposition 22, like any ballot initiative, is presumed to be valid. As our Supreme Court has described, the right of initiative is "one of the most precious rights of our democratic process," and thus the courts must "jealously guard" and liberally construe this right. (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241.) Even if there were any doubt about the constitutionality of Proposition 22 – which there should not be – those doubts should be resolved in favor of upholding the initiative power. This Court should reverse.

STATEMENT OF APPEALABILITY

Petitioners sought a writ of mandate under Code of Civil Procedure, section 1085. The trial court granted the petition on August 20, 2021, and entered judgment for Petitioners on September 13, 2021. (AA at 886-897; 898-899.) This final judgment is appealable under Code of Civil Procedure, section 904.1, subdivision (a)(1). On September 21, 2021, Defendants State of California and Director Hagen timely filed a notice of appeal. (AA at 917; Cal. Rules of Court, rule 8.104(a).)

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ISSUES PRESENTED

I. Did article XIV, section 4 of the California Constitution, which confers plenary power on the Legislature to create and to enforce a complete system of workers' compensation, effect a pro tanto repeal of the People's right to the initiative power under article IV, section 1 of the California Constitution, with respect to any matter that may indirectly impact the workers' compensation system or the workers to which it applies?

II. Is Petitioners' challenge to Proposition 22's amendment provisions ripe for review?

III. Does Proposition 22's limit on amendments concerning collective bargaining constitute an unconstitutional infringement on the power of the Legislature to enact future legislation?

IV. Is ensuring the independence of workers in the app-based industry a valid single-subject for purposes of the California Constitution's single-subject rule?

STATEMENT OF THE FACTS AND OF THE CASE

I. ASSEMBLY BILL 5 CODIFIED THE "ABC" TEST.

In 2019, the Legislature enacted Assembly Bill No. 5 (AB 5), which became effective January 1, 2020.[2] (Assem. Bill No. 5 (2019-2020 Reg. Sess.), § 1, subd. (e).) AB 5 codified the ABC test adopted in *Dynamex Operations West, Inc. v. Super. Ct.* (2018) 4

[2] AB 5 was later amended, most recently by AB 2257. The provisions of AB 5, as amended, are now codified at Labor Code sections 2775 to 2787. (See *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 296 n.3.) These statutory changes do not impact the issues raised in the petition. Unless otherwise specified, this brief refers to AB 5, as amended.

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Cal.5th 903, as applicable to most workers, with some specific exemptions.[3] Under the ABC test, a worker is classified as an employee, rather than as an independent contractor, unless the hiring entity establishes that the worker: (a) is "free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact"; (b) "performs work that is outside the usual course of the hiring entity's business"; and (c) is "customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity." (*Id.* at pp. 916-17.)

AB 5 further expanded upon *Dynamex* by requiring application of the ABC test to additional contexts, including the determination of when workers are employees for purposes of workers' compensation, unemployment insurance, and disability insurance. (Lab. Code, § 2775, subd. (b)(1).) (AA at 21¶ 17.)

II. In November 2020, the Voters Approved Proposition 22.

Proposition 22 was a direct response to AB 5. Sponsored by app-based companies, it sought to exempt app-based workers from the ABC test and establish a different framework for determining employee status in that industry. (AA at 21 ¶ 18.) Under the standard established by Proposition 22, most app-

[3] In *Dynamex*, the Supreme Court adopted the "ABC test" to determine whether a worker is classified as an employee or an independent contractor for purposes of the Wage Orders issued by the Industrial Welfare Commission. (*Dynamex Operations West, Inc. v. Super. Ct.*, *supra*, 4 Cal.5th at p. 916.)

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based drivers would likely be classified as independent contractors, not employees. California voters passed Proposition 22 by a wide margin – 58.6% to 41.4% – in the November 2020 election, and it went into effect on December 16, 2020. (AA at 204 ¶ 3.)

According to Proposition 22's Findings and Declarations, "recent legislation threatened to take away the flexible work opportunities of hundreds of thousands of Californians" who choose to work as independent contractors using "app-based rideshare and delivery platforms to transport passengers and deliver" goods, and thus the measure was deemed "necessary to protect their freedom to work independently, while also providing these workers new benefits and protections not available under current law." (Bus. & Prof. Code, § 7449, subd. (a)-(f), AA at 32.)[4] Proposition 22's stated purposes are, among others, "[t]o protect the basic legal right of Californians to choose to work as independent contractors" with app-based companies, and to "require rideshare and delivery network companies to offer new protections and benefits for app-based rideshare and delivery drivers, including minimum compensation levels, insurance to cover on-the-job injuries, automobile accident insurance, healthcare subsidies for qualifying drivers, protection against harassment and discrimination, and mandatory contractual rights and appeal processes." (*Id.* at § 7450, subds. (a) & (c).)

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[4] Proposition 22 is appended as Exhibit A to the petition. (AA 31-41.)

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Proposition 22 classifies online app-based rideshare and delivery drivers as independent contractors (not employees) with respect to their relationship with a network company for all purposes under state law, so long as various conditions are met. (Bus. & Prof. Code, § 7451; AA at 33.) Any app-based driver who is classified under the provisions Proposition 22 as an independent contractor is not covered under the workers' compensation system (for their app-based work) because only employees are covered under workers' compensation laws. (See Lab. Code, § 3600, subd. (a).)

Proposition 22 also specifies various requirements regarding amendments to the measure. (AA at 39-40; 27-28 ¶¶ 46-51.) As relevant here, the measure requires seven-eighths approval by both houses of the Legislature for two types of statutory amendments: (1) statutes that authorize an entity "to represent the interests of app-based drivers in connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions" ("the collective bargaining provision"); and (2) statutes "that prohibit[] app-based drivers from performing a particular rideshare or delivery service while allowing other individuals or entities to perform the same [service], or otherwise imposes unequal regulatory burdens upon app-based drivers based on their classification status" ("the unequal regulatory burdens provision"). (Bus. & Prof. Code, § 7465, subds. (a), (c)(3) & (c)(4).)

Lastly, the measure contains a standard severability clause, providing that, with one exception, if any portion or section of the

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measure is held invalid, "that decision shall not affect the validity of the remaining portions." (Bus. & Prof. Code, § 7467, subd. (a); AA at 40.) But, "if any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application" of the provision deeming covered workers to be independent contractors [i.e., § 7451] is held invalid, that invalidity shall apply to the entire initiative, which shall then be unenforceable. (*Id.*, subd. (b).)

III. PETITIONERS SUED, CHALLENGING PROPOSITION 22'S CONSTITUTIONALITY.

Petitioners Hector Castellanos, Saori Okawa, and Michael Robinson are California residents who work for app-based companies, including Lyft, Uber, and Doordash. (AA at 19 ¶¶ 8-11.) Petitioner Joseph Delgado is a California resident and consumer of services provided by app-based drivers. (*Id.* at ¶ 9.) Petitioner Service Employees International Union California State Council is comprised of SEIU local unions, which represent over 700,000 California workers throughout the state. (AA at 20 ¶ 12.)

Petitioners filed their petition in the Superior Court on February 11, 2021. (AA at 14.)[5] The petition specifically claims that Proposition 22 violates article XIV, section 4, of the California Constitution, which confers "plenary power" on the

[5] On January 12, 2021, Petitioners had filed an "Emergency Petition for Writ of Mandate and Request for Expedited Review" in the California Supreme Court. (See *Castellanos et al. v. State of Cal.* (2021) S266551 (Cal. Feb. 3, 2021).) On February 3, 2021, the Supreme Court denied the petition, "without prejudice to refiling in an appropriate court." (*Ibid.*)

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Legislature "to create, and enforce a complete system of workers' compensation, by appropriate legislation …." According to Petitioners, because Proposition 22 "deprives [app-based] drivers of the protections" of the workers' compensation system by designating them as independent contractors, it infringes on the Legislature's plenary powers with respect to the workers' compensation system. (AA at 25-27 ¶¶ 39-45.) Second, Petitioners contend that the measure's amendment provisions violate the separation of powers doctrine by improperly infringing on the authority of the *courts* to assess what constitutes an "amendment" to an initiative, and by purporting to limit the *Legislature's* authority to set its own rules and to enact legislation by a majority vote. (AA at 27-28 ¶¶ 46-51.) Lastly, the measure allegedly violates the single-subject rule because it "imposes other restrictions that are not substantively addressed in the measure," and that are not "reasonably germane" to its stated purposes. (AA at 28 ¶¶ 52-54.) Petitioners sought writ relief under Code of Civil Procedure, sections 1085 and 1086, precluding the State from giving effect to Proposition 22. (AA at 19, 29.)

IV. THE TRIAL COURT ENTERED JUDGMENT ENJOINING PROPOSITION 22.

On August 20, 2021, the trial court ruled for Petitioners on all three of their claims, and issued an order granting the Petition. (AA at 886.) On Petitioners' first claim, the trial court concluded that Proposition 22 is "an unconstitutional limitation on the Legislature's power to exercise its plenary power to determine what workers must be covered or not covered by the

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worker's [*sic*] compensation system." (AA at 889.) Initially, the trial court agreed that the People have the right to enact laws concerning workers' compensation through the initiative process. (AA at 888, citing *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1043.) Nevertheless, the trial court concluded that the exercise of the initiative power in Proposition 22 conflicts with article XIV, section 4, because it limits the Legislature's power with respect to workers' compensation by creating a condition (i.e., subsequent voter approval) for legislative amendment. (AA at 889.) The court explained, "[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,'" and instead "it would be limited by Article II, Section 10, subdivision (c)." (*Id.*) Ultimately, the trial court concluded that the "plain meaning of Article XIV, Section 4's plenary-and-unlimited clause governs over the more general limitation on amendment in Article II Section 10," (AA at 889), and that the People cannot enact the changes intended by Proposition 22 other than by a constitutional amendment. (*Ibid.*)

The trial court also ruled for Petitioners on their challenge to Proposition 22's amendment provisions pertaining to collective bargaining.[6] Rejecting Defendants' arguments that Petitioners'

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[6] The trial court also expressed skepticism regarding the constitutionality of the "unequal regulatory burdens" provision, but resolved such doubts in favor of its validity. (AA at 894.) Similarly, although Petitioners' petition did not raise any

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challenges were not ripe, the trial court concluded that the claims are properly presented because "[i]n a facial challenge, the Court considers only the text of the statute." (AA at 891, citation omitted.) The court concluded that the collective bargaining provision "unconstitutionally purports to limit the Legislature's ability to pass future legislation that does not constitute an 'amendment'" under the Constitution. (AA at 895.)

Lastly, the trial court ruled that Proposition 22 violates the single subject rule because its provisions deal with collective bargaining rights "only obliquely and indirectly, as a side effect of a contested construction of certain antitrust laws as barring independent contractors from bargaining collectively." (AA at 896.) The court concluded that this "is related to Proposition 22's subject but it is utterly unrelated to its stated common purpose," which it reasoned is "protecting the opportunity for Californians to drive their cars on an independent contract [*sic*] basis, to provide those drivers with certain minimum welfare standards, and to set minimum consumer protection and safety standards to protect the public." (*Ibid.*) The trial court thus held that the provision regarding amendment pertaining to collective bargaining rights does not relate to these purposes, and instead "appears only to protect the economic interests of the network

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challenge to the "12 days of publication" requirement under § 7465, subd. (a), the trial court stated that it might be unconstitutional, but construed the requirement to avoid any constitutional conflict. (AA at 892.)

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companies in having a divided ununionized work force, which is not a stated goal of the legislation." (*Ibid.*)

The court ultimately concluded that Proposition 22's provisions concerning independent contractor status for app-based drivers, codified at Business and Professions Code section 7451, are not severable, and thus deemed the entire initiative unenforceable. (AA at 897.) Judgment was entered on September 13, 2021, and the court indicated that a peremptory writ shall issue "ordering Respondent Katie Hagen, Director of the California Department of Industrial Relations, not to enforce or otherwise give effect to any provisions of Proposition 22 (2020), the Protect App-Based Drivers and Services Act." (AA at 899.)

STANDARD OF REVIEW

"[T]he petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 460, citation omitted.) "The petitioner bears the burden of pleading and proving the facts on which the claim for relief is based." (*Cal. Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153-54.)

Because the facts are undisputed, this Court's review of the trial court's decision is de novo. "In reviewing the trial court's ruling on a writ of mandate [citation], the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. [Citation.] However, the appellate court may make its own

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determination when the case involves resolution of questions of law where the facts are undisputed. [Citation.].” (*Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700.) “Any issue of statutory interpretation or question of law when the facts are undisputed is reviewed de novo.” (*L.A. Police Protective League v. City of L.A.* (2014) 232 Cal.App.4th 136, 141.)

Additionally, because the petition challenges the constitutionality of an initiative measure, this Court is guided by “policies [the California Supreme Court] has consistently followed in cases challenging the validity of initiative measures.” (*Briggs v. Brown* (2017) 3 Cal.5th 808, 827.) As explained by the Supreme Court, although the Constitution vests legislative power in the Legislature, “the people reserve to themselves the powers of initiative and referendum.” (Cal. Const., art. IV, § 1.) “Accordingly, the initiative power must be *liberally construed* to promote the democratic process.” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501, emphasis in original.) The courts’ “solemn duty [is] to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise.” (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 827, citation omitted.) Thus, in assessing Petitioners’ challenges to Proposition 22, this Court must apply a presumption in favor of the initiative’s validity. “[M]ere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. If the validity of the measure is ‘fairly debatable,’ it must be sustained.” (*Id.* at p. 828, citations and quotations omitted.)

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SUMMARY OF ARGUMENT

The Supreme Court has identified the initiative power as one of the most precious rights of our democratic process. Accordingly, the case law governing challenges to initiative measures reflects the respect and deference given to the People's exercise of the initiative power. In concluding that Proposition 22 violates the Constitution and holding that the measure is unenforceable, the trial court failed to accord the deference due to the initiative power at every step of its analysis. Moreover, even putting aside its failure to accord the initiative the deference due, the court's legal conclusions with respect to each of the three bases for finding that Proposition 22 is unconstitutional are in error.

First, the trial court erroneously concluded that Proposition 22 conflicts with article XIV, section 4, of the California Constitution because the measure neither purports to, nor does, limit the Legislature's ability to create and to enforce a complete system of workers' compensation; rather, it merely impacts a threshold question as to whether a particular category of workers are employees (covered by the system) or independent contractors. Although the trial court ruled that Proposition 22 improperly limits the power of the Legislature to define app-based drivers as employees entitled to workers' compensation coverage, article XIV, section 4 does not sweep so broadly as to limit the People's initiative power concerning worker classification. To the extent the Legislature has authority to determine which workers fall within the workers' compensation

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system, the People have the coextensive power through the initiative process.

Second, the trial court erred as a matter of law by concluding that Proposition 22's amendment provisions about collective bargaining violate the Constitution's separation of powers requirement. Petitioners' challenge in this respect is not ripe because they have not cited any enacted or proposed laws that allegedly conflict with the amendment provisions. Moreover, the amendment provisions are within the broad power of initiatives to indicate the conditions under which they may be amended by the Legislature, which the case law plainly allows. The trial court's contrary conclusion that the amendment provisions are unconstitutional because they define, as amendments, legislation that would not qualify as such under article II, section 10, is erroneous. The collective bargaining provisions further the initiative's broad purpose of preserving driver independence, and the courts should defer to the People's judgment that legislation providing for collective bargaining in this context would constitute an amendment undermining the initiative. Article II, section 10 imposes limits on the *Legislature's* ability to amend an initiative passed by the voters. Even assuming arguendo that the amendment provisions present constitutional conflicts, they can be construed in a manner to avoid such conflict, or can otherwise be severed from the other provisions in the measure.

Third, Petitioners' single subject challenge claim fails because all of Proposition 22's provisions—including the amendment provisions at issue—are reasonably germane to the

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measure's purposes to preserve the right of Californians working in the app-based industry to work as independent contractors, free from any number of obligations or limits on self-representation, and to prevent the imposition of new regulation on individuals based on their status as independent contractors working in this area. In concluding that the amendment provisions are unrelated to Proposition 22's stated aims, the trial court took an unreasonably constrained view of the measure's purpose.

ARGUMENT

I. PROPOSITION 22 DOES NOT CONFLICT WITH ARTICLE XIV, SECTION 4.

Petitioners claimed that Proposition 22 violates article XIV, section 4 of the California Constitution because it removes app-based drivers from the workers' compensation system. (AA at 23, 25-27.) The trial court ruled that Section 7451 "is unconstitutional because it limits the power of a future legislature to define app-based drivers as workers," and concluded that "[t]he 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 at 896, 889.) This was error.

The initiative power is a key aspect of the California Constitution, and must be "jealously guarded." Fundamentally, Proposition 22 does not impact the Legislature's authority to create and enforce a complete workers' compensation system, but instead merely specifies that individuals working in a certain industry and under certain specified conditions, are not

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employees under California law. The trial court held that the provisions of article XIV, section 4, impliedly repealed "'one of the most precious rights of our democratic process,'" ignoring its obligation to "'*resolve any reasonable doubts in favor of this precious right*.'" (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241, citations omitted; see *Briggs v. Brown*, *supra*, 3 Cal.5th at p. 827 ["The Constitution's initiative and referendum provisions should be liberally construed to maintain maximum power in the people"].) Ultimately, this Court should resolve this case by avoiding any conflict between constitutional provisions, and resolve any doubts in favor of the initiative power.

A. The Initiative Power Is a Paramount Element of the California Constitution, and Thus the Court Should Uphold Proposition 22 as a Valid Exercise of the People's Power.

The trial court concluded that Proposition 22 constitutes "an unconstitutional continuing limitation on the Legislature's power to exercise its plenary power to determine what workers must be covered or not covered by the worker's compensation system." (AA at 889.) Although the trial court correctly recognized that the power of the Legislature under the workers' compensation provision can be likewise exercised by the People, through the initiative process, it nevertheless ruled that the initiative power conflicts with the Legislature's plenary authority under article XIV, section 4. (AA at 888.) As stated by the trial court: "If the Legislature's authority is limited by an initiative statute, its authority is not 'plenary' or 'unlimited by any provision of [the] Constitution,'" and instead "it would be limited by Article II, Section 10, subdivision (c)." (AA at 889.)

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This ruling improperly and unnecessarily found a conflict between constitutional provisions where none actually exists. As the Supreme Court has often emphasized, courts have a duty "to harmonize constitutional provisions where possible." (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 627; *City and County of S.F. v. County of San Mateo* (1995) 10 Cal.4th 554, 563.) Here, article XIV, section 4, which confers plenary authority on the Legislature to create and to enforce a workers' compensation system, and Article II, section 10, which limits the Legislature's authority to amend a statute adopted by initiative, can be harmonized by acknowledging the well-settled principle that the Legislature's plenary power and the People's power to legislate through initiative (including with respect to the workers' compensation system) are concomitant. The trial court's conclusion rests on the faulty legal premise that "plenary" powers granted to the Legislature in the California Constitution can be exercised only by the Legislature, and not also through the initiative process. As the Supreme Court has noted, "[p]lenary authority and exclusive authority are not synonymous concepts." (*Prof. Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1042; *Indep. Energy Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020, 1035.)

Article IV, section 1 provides that the legislative power "is vested in the California Legislature . . . but the people reserve to themselves the powers of initiative and referendum." The case law underscores "the centrality of direct democracy in the California Constitution, and the status of [the] presumption

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liberally construing the initiative power as a paramount structural element of our Constitution." (*Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946.) "This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature." (*Carlson v. Cory* (1983) 139 Cal.App.3d 724, 728.) Accordingly, "long-standing California decisions establish[] that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power." (*Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th at p. 1043; see also *Fair Political Practices Com. v. Super. Ct.* (1979) 25 Cal.3d 33, 42 ["The people having reserved the legislative power to themselves as well as having granted it to the Legislature, there is no reason to hold that the people's power is more limited than that of the Legislature"].)

Consistent with this fundamental principle, the Supreme Court has made clear, in interpreting language similar to that in article XIV, section 4, that a delegation of plenary authority to the Legislature does not displace the People's initiative power. (*Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th at p. 1025.) In *Independent Energy Producers,* the Court rejected the argument that a grant to the Public Utilities Commission of "plenary power, unlimited by the other provisions of this constitution," imposed limits on the People's power of initiative. (*Id.* at pp. 1036-37.) Thus, the Legislature's authority—including the power to legislate with respect to the

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workers' compensation system—exists concomitantly with the People's power to exercise legislative authority through the initiative process. In short, the "plenary power" of the Legislature *includes* the power of the People to act through initiative. (*Id.* at pp. 1043-44.)

B. Article XIV, Section 4, Did Not Effect a Pro Tanto Repeal of the Initiative Power in Article II, Section 10

Article XIV, section 4, vests the Legislature "with plenary power, unlimited by any provisions of this Constitution, to create, and enforce a complete system of workers' compensation." (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 343-344.) Its background and context explain its purposes. In the early part of the 20th century, "California joined many other states by enacting a workers' compensation system that operated largely without regard for the common law system of fault." (*Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 649.) Because this system "was such a radical change from the common law relating to recompense for occupational injuries, the Legislature sponsored an amendment to the state Constitution" to affirm the legality of the system. (*Ibid.*) Thus, the purpose of this section was "to remove any doubt about the constitutionality of the workers' compensation legislation." (*Costa v. Workers' Comp. Appeals Bd.* (1998) 65 Cal.App.4th 1177, 1185; *City and County of S.F. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 114.)

Significantly, "rather than imposing a mandate on the Legislature to create and enforce an unlimited system of workers'

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compensation benefits," this provision "was intended to safeguard the full, unfettered authority of the Legislature to legislate in this area, as it saw fit." (*Facundo-Guerrero v. Workers' Comp. Appeals Bd.*, *supra*, 163 Cal.App.4th at p. 650.) Article XIV, section 4 "defin[es] the necessary provisions for a complete workers' compensation system, and leav[es] it up to the Legislature to enact laws to give effect to each provision." (*Bautista v. State of Cal.* (2011) 201 Cal.App.4th 716, 729 [].)

The trial court's conclusion, if correct, would effectively mean that the workers' compensation provision— which itself was enacted by initiative— impliedly repealed the initiative power as it relates to workers' compensation. (AA at 889 ["When Section 4 was ratified in 1918, the statutory initiative power already existed in the Constitution."]) But this would ignore the "presumption against repeals by implication." (*Prof. Engineers in Cal. Government v. Kempton*, *supra*, 40 Cal.4th at p. 1038.) And implied repeal is especially disfavored in the context of the power of initiative. (*Cal. Cannabis Coalition v. City of Upland*, *supra*, 3 Cal.5th at pp. 938-39.) "[W]hen weighing the tradeoffs associated with the initiative power, we have acknowledged the obligation to resolve doubts in favor of the exercise of the right whenever possible," which goes hand in hand with the "presumption liberally construing the initiative power as a paramount structural element of our Constitution." (*Id.* at pp. 945-946.) Thus, although "voters . . . can conceivably make the clear and important choice to bind themselves by making it more difficult to enact initiatives in the future," such a choice must be clearly

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made. (*Id.* at p. 931.) That is why "[w]ithout a direct reference in the text of a provision—or a similarly clear, unambiguous indication that it was within the ambit of a provision's purpose to constrain the people's initiative power—[courts] will not construe a provision as imposing such a limitation." (*Id.* at p. 924; see also *id.* at p. 948 ["Only by approving a measure that is unambiguous in its purpose to restrict the electorate's own initiative power can the voters limit such power"].)

The trial court failed to address the clear statement rule. (AA at 889.) Petitioners and the trial court pointed to nothing in article XIV, section 4, related ballot materials, or legislative history that clearly indicated an intent to impose unprecedented limitations on the People's initiative power. (*Ibid.*) And although the initiative power was established before article XIV, section 4, the latter provision "does not even mention the initiative power, let alone purport to restrict it." (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249; *Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th at p. 1033.) Similarly absent are "sufficiently unambiguous statements" in ballot materials that section 4's "purpose was to constrain the initiative power." (*Cal. Cannabis Coalition v. City of Upland*, *supra*, 3 Cal.5th at pp. 945-946.) This fails to meet the burden for rebutting the "strong presumption" against an implied repeal of the initiative power. In fact, as noted, article XIV, section 4, "was added to the Constitution and then amended for *the sole purpose* of removing all doubts as to the constitutionality of the then existing workmen's compensation

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statutes" (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 734, emphasis added), not to prevent the People from enacting initiatives that may touch, even indirectly, on the workers' compensation system.

Furthermore, if the trial court's expansive interpretation of the workers' compensation provision were adopted, it "would signify that a statute passed by the Legislature pursuant to [article XIV, section 4] 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." (*Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th at p. 1036 [referring to an almost identical provision in the California Constitution conferring plenary authority on the Legislature with respect to public utilities].) This is not the law.

C. Contrary to the Trial Court's Conclusion, Article XIV, Section 4, Does Not Conflict with Article II, Section 10.

Even assuming arguendo that article XIV, section 4 impliedly repealed the People's initiative power in article IV, section 1, with respect to any matter potentially impacting the workers' compensation system, Petitioners' claim still fails because Proposition 22 does not *modify* the workers' compensation system at all, nor impact the Legislature's authority to *create* or to *enforce* such a system. Instead, the measure specifies that, for all purposes under California law (not just as related to workers' compensation), and under specified conditions, app-based workers are independent contractors, not

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employees. (*Lawson v. Grubhub* (9th Cir. 2021) 13 F.4th 908, 912 [noting that Proposition 22 "provides that, if certain conditions are met, 'app-based drivers' are independent contractors."]; *James v. Uber Tech.* (N.D. Cal. 2021) 338 F.R.D. 123, 143-44 ["Prop 22 passed on November 3, 2020, repealing AB 5 with respect to app-based drivers and declaring these drivers to be independent contractors, as long as the network company . . . provides those drivers with specific wage and hour protections."].)

The trial court reasoned that "Proposition 22's Section 7451 is . . . an unconstitutional continuing limitation on the Legislature's power to exercise its plenary power to determine *what workers must be covered or not covered by the worker's [sic] compensation system*." (AA at 889, emphasis added.) But this conclusion erroneously conflates the authority to create and enforce a workers' compensation system, with the authority to set forth standards governing the classification of workers, which may indirectly impact eligibility for workers' compensation (among other benefits).[7] Ultimately, there is no conflict between

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[7] The trial court also stated that "if the People wish to use their initiative power to restrict or qualify a 'plenary' and 'unlimited' power granted to the Legislature, they must first do so by initiative constitutional amendment, not by initiative statute." (AA at 889.) This underscores the court's flawed analysis of the effects of Proposition 22 and the breadth of the scope of Section 4. Proposition 22 does not impact the Legislature's constitutional power to create and enforce a workers' compensation system; it merely creates a new standard for classification of certain workers as independent contractors versus employees (which indirectly impacts those workers' entitlement to participate in the workers' compensation system).

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the measure and the Constitution. (*Hustedt v. Workers' Comp. Appeals Bd.*, *supra*, 30 Cal.3d at p. 343; see *Cty. of Los Angeles v. State of Cal.* (1987) 43 Cal.3d 46, 61.)

In fact, courts have made clear that the Legislature's "plenary authority" under article XIV, section 4, does *not* extend beyond the parameters of the workers' compensation system itself. In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, for example, the Supreme Court analyzed a potential conflict between California's subvention requirement and the provision of workers' compensation benefits, ultimately concluding that the Constitution does not require subvention for the costs incurred by local government in providing increases in workers' compensation benefits. "A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote . . . would place workers' compensation legislation in a special classification of substantive legislation." (*Id.* at pp. 59-60.) Because the goals of the law challenged there could be achieved without subvention for the costs of increases in workers' compensation benefits, the subvention provision "did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation." (*Id.* at pp. 61-62.)

Similarly, in *Hustedt,* the Court held that the Legislature had exceeded its authority under article XIV, section 4, in purporting to grant the Workers' Compensation Appeals Board the authority to discipline an attorney and to bar the attorney from practicing before the Board. The Court held that even

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though attorneys practice in the workers' compensation system, attorney discipline is a judicial function and not "integral" to the system. Thus, the Legislature's plenary authority did not extend to this area. (*Hustedt v. Workers' Comp. Appeals Bd.*, *supra*, 30 Cal. 3d at p. 343.)

Taken to its logical conclusion, the trial court's reasoning would have absurd results. Under its holding, the People's initiative power could never be exercised with respect to an issue that would *indirectly* impact eligibility for the workers' compensation system. For example, if a ballot initiative created a new class of legal commerce, it would be deemed unconstitutional under the trial court's reasoning because it creates a new class of workers eligible for workers' compensation. (*See, e.g.,* Proposition 64 (2016) [creating a system for regulation of marijuana-related business and avenues for a new class of workers to move into legally-recognized employment relationships eligible for participation in the workers' compensation system].)

If the People's initiative power cannot touch any subject that indirectly impacts the workers' compensation system – and Proposition 22 did so only indirectly, by impacting who is deemed an employee under state law – then matters of critical public interest are off limits to the people. This result is contrary to the promise of California's Constitution. (*See Brosnahan*, 32 Cal.3d at 241 [the People's initiative power is "one of the most precious rights of our democratic process,"]; *Amador Valley J. Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 229 ["Indeed, if the foregoing description of the initiative as a

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'legislative battering ram' is accurate it would seem anomalous to insist . . . that the sovereign people cannot themselves act directly to adopt tax relief measures of this kind, but must instead defer to the Legislature, their own representatives."].)

In approving Proposition 22 to classify app-based drivers as independent contractors, one of the impacts of which is that they will fall outside the workers' compensation system, the People did only that which the Legislature could have also done, consistent with the initiative power under the Constitution. Because Proposition 22 reflects a proper exercise of the People's initiative power, which co-exists with the Legislature's powers under article XIV, section 4, the trial court erred in granting writ relief.

II. PROPOSITION 22'S AMENDMENT PROVISIONS ARE CONSTITUTIONAL.

The trial court also ruled that Proposition 22's amendment provisions violate the Constitution. (AA 890-895.) Again, this ruling was erroneous.

Petitioners' challenge focused on Proposition 22's amendment provisions, which (as relevant here) apply to certain types of prospective statutes, namely those authorizing an entity "to represent the interests of app-based drivers in connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions" (the collective bargaining provision). (Bus. & Prof. Code, § 7465, subds. (a), (c)(4).) Petitioners claimed that these provisions usurp the authority of the courts by defining preemptively what would constitute "amendments," thus "depriv[ing] the courts of their authority under article VI of the California Constitution to

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interpret the Constitution." (AA at 27 ¶ 47.) Petitioners further claimed that these provisions also allegedly "attempt to define certain areas of legislation on matters not substantively addressed in the measure as 'amendments,'" thereby improperly limiting the Legislature's "constitutional authority to pass bills by majority vote." (AA at 27-28 ¶ 50.)

The trial court's order appears to reject Petitioners' claim that the amendment provisions violate separation of powers, but the court nevertheless concluded that the provisions are unconstitutional. (AA at 892 [concluding that Petitioners' challenge to the amendment provisions "is contrary to their plain language."].)[8] The trial court erred in ruling for Petitioners for three reasons. First, Petitioners' challenge rests entirely on the vague, speculative ground that *hypothetical* future statutes falling within the scope of those provisions may not qualify as "'amendments' under judicial precedents." (AA at 27 ¶ 47.) Accordingly, this claim is not ripe, and the trial court should have declined to rule on it. Second, as the trial court acknowledged, well-settled case law recognizes that a measure may provide limitations on subsequent legislation that "takes away" from the statutory scheme established by the initiative. (AA at 893, *citing Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776.) Third,

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[8] Notably, the trial court held that the "unequal regulatory burdens" provision, (Bus. & Prof. Code, § 7465, subds. (a), (c)(3)), does not violate separation of powers principles. (AA at 894 ["Resolving doubts in favor of the initiative power, Subdivision (c)(3) passes muster against a facial challenge."].)

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to the extent the Court concludes that the amendment provisions potentially present constitutional problems, the Court should construe those provisions to avoid such conflict, or sever them from the rest of the initiative.

A. Petitioners' Challenges to the Amendment Provisions Are Not Ripe.

An action must be ripe to be justiciable. (*Pacific Legal Foundation v. Cal. Coastal Com.* (1982) 33 Cal.3d 158, 170.) "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." (*Ibid.*) "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is, in part, designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes." (*Ibid.*)

In the trial court, Petitioners did not identify any statutes that are allegedly constrained by Proposition 22, any bills passed by the Legislature seeking to amend related areas on a simple majority vote, or any cases currently pending in which the courts' discretion has allegedly been straitjacketed by Proposition 22.[9]

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[9] As the trial court noted, certain amici curiae argued that these claims were ripe based on two pieces of emergency legislation. (AA at 891.) The trial court properly rejected these (continued…)

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(AA at 27-28 ¶¶ 46-51.) Petitioners' challenge instead rests on speculation that hypothetical *future* statutes falling within the scope of those provisions may not qualify as "'amendments' under judicial precedents." (AA at 27 ¶ 47.) This is a request for an advisory opinion regarding a controversy "which [Petitioners] fear will arise, but which do[es] not presently exist." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 78.) However, "courts are unable properly to adjudicate issues when only hypothetical facts are involved," as is the case here. (*Teachers' Ret. Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1043-1044, quotations omitted.)

Despite this defect, the trial court ruled that the amendment provisions "are ripe for a facial challenge," concluding that ripeness only requires that the statute be passed and in effect for a viable challenge to lie. (AA at 891.) The trial court cited *Alliance for Responsible Planning v. Taylor* (2021) 63 Cal.App.5th 1072, which is inapplicable here. Unlike Petitioners' challenge here, the claim there did "not depend on the application of the measure to a particular petitioner" or its future interpretation, but instead raised the question "whether the challenged [provisions] are reasonably susceptible to constitutional

(…continued)

arguments because neither party raised them. (*Id.*) As a general rule, courts have made clear that "amicus curiae may not raise new issues but 'must accept the case as it finds it.'" (*Bruno v. Super. Ct.* (1990) 219 Cal.App.3d 1359, 1365; *Crump v. App. Div. of Super. Ct.* (2019) 37 Cal.App.5th 222, 251 n.11 .)

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interpretation." (*Id.* at p. 1082.) But here, Petitioners' claims depend on how Proposition 22 might apply to hypothetical future laws. The trial court erred— courts should not engage in an exercise of determining whether some hypothetical bill may or may not be an amendment under the terms of the measure.[10]

The trial court also stated, citing the legal standard for facial challenges, that "the Court considers only the text of the statute." (AA at 891.) But the trial court went beyond the text of Proposition 22, hypothesizing about potential laws implicating the "unequal regulatory burdens" exception in the initiative, as well as "the most maximal state law covered only by Subdivision (c)(4)" and its putative effects to assess the constitutionality of the initiative. This is counter to ripeness principles, which require a concrete dispute. It also contravenes the firmly established rule that a statute will be upheld against a facial challenge unless the party asserting unconstitutionality shows that it is unconstitutional in the great majority of cases. (See, e.g., *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1126; *Zuckerman v. State Bd. Of Chiropractic Examiners* (2002) 29

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[10] Notably, even in a declaratory relief action, which is not presented here, courts "must first determine that the issues raised are sufficiently concrete to allow judicial resolution even in the absence of a precise factual context." (*Pacific Legal Foundation v. Cal. Coastal Com.*, *supra*, 33 Cal.3d at p. 170; see also *City of Santa Monica v. Stewart*, *supra*, 126 Cal.App.4th at p. 64 [holding that declaratory relief action "by which [plaintiff] seeks 'the benefit' of judicial guidance 'as to the constitutionality of the Initiative,' is insufficiently concrete and fails to touch the legal relations of parties with actual adverse legal interests."].)

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Cal.4th 32, 39 ["A plaintiff challenging the facial validity of a statute 'cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute'"], citation omitted.)

As the Court stated in *Briggs*, in assessing a facial challenge to a measure, "'except as necessary to resolve the basic questions before us, [courts] do not consider . . . possible interpretive or analytical problems' that might arise from the measure in the future." (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 827, citation omitted.) Petitioners presented no statute, enacted or even proposed, allegedly constituting an amendment to Proposition 22, and therefore their claim was not ripe. Thus, because there is no present controversy to be considered, Petitioners' second and third causes of action should have been dismissed.

B. Proposition 22's Amendment Provisions Do Not Violate the Constitution Because Initiatives Can Allow Legislative Amendment Under Specified Conditions.

Even if Petitioners' challenges to Proposition 22's amendment provisions are ripe, they fail on the merits. Initiatives cannot be amended by the Legislature without voter approval. But initiatives *can* provide for amendment under specified conditions, which is what Proposition 22's amendment provisions do.

Article II, section 10, subdivision (c) of the California Constitution states: "The 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."

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"Under article II, section 10, subdivision (c), the voters have the power to decide whether or not the Legislature can amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment *subject to conditions attached by the voters*." (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251 [emphasis in original]; *Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, 167.) "The Legislature may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment, 'and then only upon whatever conditions the voters attached to the Legislature's amendatory powers.'" (*People v. Super. Ct. (Pearson)* (2010) 48 Cal.4th 564, 568, citation omitted.)

The trial court acknowledged that the voters have the power to set conditions for initiative amendments. (AA at 890, 893.) Accordingly, it rejected Petitioners' challenge to the "unequal regulatory burdens" amendment provision, Bus. & Prof. Code, § 7465, subds. (a), (c)(3). (AA at 894.) But the court concluded that subdivision (c)(4) is unconstitutional because "there is no other language in Proposition 22 that directly relates to labor representation or collective bargaining." (*Ibid.*) Rejecting the argument that collective bargaining is incompatible with Proposition 22's aim of preserving the independence of app-based drivers, the trial court ruled that this provision "unconstitutionally purports to limit the Legislature's ability to pass future legislation that does not constitute an 'amendment' under Article II, Section 10, Subdivision (c)." (AA at 894-895.) In other words, the trial court required that future legislation

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"directly relate" to existing provisions of an initiative in order to constitute "amendments."

But this is not the law. Subsequent legislation need not literally change or alter statutory language to constitute an amendment under Article II, Section 10, subdivision (c). As the trial court acknowledged, "[a] statute also constitutes an amendment if it 'adds to or takes away from an existing statute.'" (AA at 893, quoting *Franchise Tax Bd. v. Cory*, *supra*, 80 Cal.App.3d at p. 776.) An attempt "to reach situations which were not covered by the original statute," would thus constitute an amendment, "even though in its wording it does not purport to amend the language of the prior act." (*Franchise Tax Bd. v. Cory*, *supra*, 80 Cal.App.3d at p. 777.)

This category of indirect amendments is subject to the same case law unambiguously holding that an initiative can prescribe the terms under which it may be amended. The trial court's ruling fails to give this aspect of the People's choice the deference it is due. As the Supreme Court noted, in considering an initiative measure that required that amendments further its purposes and pass by a two-thirds majority, "[t]hese legislative choices by the electorate are entitled to the same deference by the courts as enactments of the Legislature." (*Consulting Engineers and Land Surveyors of Cal., Inc. v. Prof. Engineers in Cal. Government* (2007) 42 Cal.4th 578, 588.) If it were otherwise, arbitrary and judicially unmanageable distinctions concerning hypothetical amendments would impair the power guaranteed to the People under article II, section 10, subdivision (c).

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Thus, even if the trial court was correct that an initiative statute cannot limit subsequent legislation unless that subsequent legislation constitutes an "amendment," as the term is used in article II, section 10, subdivision (c), (AA at 893), the amendment provisions at issue here are consistent with this principle, for two reasons.

First, as noted, the trial court's focus on whether "other language" in Proposition 22 explicitly references collective bargaining reflected a form of textual formalism that is neither required nor supported by case law. Proposition 22 did, in fact, fix the labor relationship of covered workers: they are not permitted to collectively bargain. (AA at 894-895.) Even though the Proposition did not use the words "collective bargaining" elsewhere, the practical effect of its provisions unmistakably regulated the ability of covered workers to collectively bargain, locking in place the status quo of collective bargaining not being permitted for such non-employees.

Second, the inclusion of collective bargaining among the topics subject to the amendment conditions reflects that the voters understood (correctly) that Proposition 22 did, in fact, impact the ability of app-based workers to collectively bargain. Overlooking both the practical effects of Proposition 22 and the voters' understanding that fixing the collective bargaining status was, in fact, an important part of Proposition 22's purpose, the trial court asserted, without any meaningful analysis, that a law authorizing collective bargaining for only this set of non-employees "would [not] diminish [the workers'] 'independence' or

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transmute them into employees." (AA at 894-895.) This substitution of the trial court's judgment for the voters' was error, especially given the deference courts should afford to the People's exercise of the initiative power.

Petitioners' claims also fail because article II, section 10, subdivision (c) limits the *Legislature*'s (as opposed to the voters') authority. (*Amwest Surety Ins. Co. v. Wilson*, *supra*, 11 Cal.4th at p. 1255-56 [noting that "article II, section 10, subdivision (c), prohibits the Legislature from amending an initiative without voter approval unless the initiative grants the Legislature such authority"]; *O.G. v. Super. Ct. of Ventura County* (2021) 11 Cal.5th 82, 90).) As courts have pointed out, the "evident purpose" of limiting the Legislature's power to amend an initiative is to *protect* the People's initiative powers. (*Cty. of San Diego v. Com. on State Mandates* (2018) 6 Cal.5th 196, 211; *People v. Super. Ct.* (2020) 51 Cal.App.5th 896, 908.) Applying this principle here to *limit* the People's initiative power – in the first instance, by declaring the amendment provisions of an initiative unconstitutional – is particularly inappropriate. (See *Cty. of San Diego v. Commission on State Mandates*, *supra*, 6 Cal.5th at pp. 213-14 ["Nor is an overbroad construction of article II, section 10 of the California Constitution necessary to safeguard the people's right of initiative."].)

Finally, underscoring the ripeness problem presented by Petitioners' claim, the trial court erred in preemptively declaring the amendment provisions of Proposition 22 facially unconstitutional because the core issue – whether any specific

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future legislation constitutes an "amendment" of Proposition 22 within the meaning of article II – can and should be decided at a future time, by a future court, to which a concrete legal challenge to specific legislation is presented. (*Amador Valley J. Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at p. 247 [in declaratory judgment challenge to initiative measure, declining to "attempt to pass upon the meaning or validity of each contested provision in every hypothetical context," and noting that "adjudication of these matters must await an actual controversy, and should proceed on a case-by-case basis as the need arises."].) The terms of Proposition 22 going forward are necessarily circumscribed by the provisions of article II concerning the People's power of initiative, and if the amendment provisions of Proposition 22 are unconstitutional as applied to specific future legislation, the provisions may be deemed unenforceable at that time, and as applied to that legislation.

Ultimately, if there were any doubt regarding the constitutionality of Proposition 22's amendment provisions, such doubts should be resolved in favor of the measure because initiative measures "must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501; *Amador Valley J. Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at p. 248 [noting that "if doubts reasonably can be resolved in favor of the use of the initiative, [courts] should so resolve them."].) Subdivisions (a) and (c)(2) of Business &

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Professions Code section 7465, enacted by Proposition 22, constitute the People's definition of *impermissible* amendments to statutes that are contrary to the purposes described in Business & Professions Code sections 7449 and 7450. This does not violate the Constitution.

C. If the Amendment Provisions Pose a Constitutional Conflict, They Should Be Construed in a Manner to Avoid Such Conflict, or Severed from Proposition 22.

Alternatively, if the amendment provisions raise any constitutional concerns, the Court should construe them in a way to avoid any constitutional conflict. If that is impossible, the Court can also sever those provisions, giving effect to the will of the People as expressed in Proposition 22's severability provision. (Bus. & Prof. Code, § 7467.) Although the trial court recognized the severability doctrine, it did not rule regarding the severability of the amendment provisions. (AA at 895.)

The separation of powers principle "limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch." (*Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 297.) Nevertheless, this principle "recognizes that the three branches of government are interdependent, and it permits actions of one branch that may 'significantly affect those of another branch.'" (*Id.* at p. 298, citation omitted.) In this context, the California Supreme Court "constru[es] statutes, when reasonable, to avoid difficult constitutional questions." (*LeFrancois v. Goel* (2005) 35 Cal.4th 1094, 1105; see also *In re Smith* (2008) 42 Cal.4th 1251, 1270.)

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For example, where a statute appeared to interfere with the exercise of a court's constitutional jurisdiction, the California Supreme Court avoided constitutional conflict by construing the legislation "strictly against the impairment of constitutional jurisdiction." (See *Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253.) In *Matosantos*, a statute provided that all challenges to its validity must be brought in the Sacramento County Superior Court. (*Ibid.*) A petition challenging the statute, however, was brought directly in the California Supreme Court, which has original jurisdiction "in all proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." (*Ibid.*) The Court construed the challenged statute narrowly as applying only to actions over which it retains appellate jurisdiction and having no bearing over "special proceedings." (*Ibid.*; see also *Briggs v. Brown*, *supra*, 3 Cal.5th at p. 858 [declining to strike down initiative under separation of powers, and noting that absent "clearer indications that this was the voters' intent, we will not presume they meant to hamper the courts in the conduct of their business."].)

The same considerations counsel in favor of similarly construing Proposition 22 in a liberal fashion to avoid constitutional conflict. In particular, and as described above, this Court should construe the measure as broadly guaranteeing app-based workers' ability to work as independent contractors, apart from the laws and regulations governing the employment relationship, including potential collective bargaining structures. This interpretation is consistent with the text of Proposition 22

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and statements by the measure's proponents; it also appropriately avoids the constitutional issue concerning the amendment provisions that Petitioners now raise.

Finally, the measure also contains a severability clause. (Bus. & Prof. Code, § 7467, subd. (a).) "[A] severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821, citation omitted.) The challenged amendment provisions constitute a discrete section of Proposition 22 that can be excised from the rest of the measure, without affecting the other provisions, and without impacting the initiative's effectiveness and operation. (*Hotel Employees & Restaurant Employees International Union v. Davis* (1999) 21 Cal.4th 585, 613.) Further, Proposition 22's remaining provisions "constitute an independent operative expression of legislative intent, unaided by the invalidated provisions," and they are "capable of independent application." (*Barlow v. Davis* (1999) 72 Cal.App.4th 1258, 1265-66; *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 715.) Thus, they may be severed "grammatically, functionally, and volitionally."

III. PROPOSITION 22 IS CONSISTENT WITH THE SINGLE SUBJECT RULE.

The trial court also incorrectly concluded that Proposition 22 violates the single subject rule. (AA at 895-896.) Specifically, the court concluded that Section 7465, subdivision (c)(4), which relates to collective bargaining issues, is "utterly unrelated" to the measure's overall common purpose. (AA at 896.) Given the

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plain purpose of Proposition 22, and the liberal interpretative tradition applicable to the initiative process when these measures are challenged, the trial court's conclusion was erroneous.

Under article II, section 8, subdivision (d) of the California Constitution, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." The single-subject rule is designed "to protect against multifaceted measures of undue scope," "containing 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.) But this doctrine "does not require that each of the provisions of a measure effectively interlock in a functional relationship" (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 828), nor was it "enacted to provide means for the overthrow of legitimate legislation." (*Fair Political Practices Com. v. Super. Ct.* (1979) 25 Cal.3d 33, 38). Thus, no conflict arises where, as here, a measure's provisions are "reasonably germane to a *common* theme, purpose, or subject," as reflected by the measure's title, findings, and declarations. (*Brown v. Super. Ct.* (2016) 63 Cal.4th 335, 350, citation omitted.) "Numerous provisions, *having one general object*, if fairly indicated in the title, may be united in one act." (*Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 246, citation omitted and emphasis in original; *Manduley v. Super. Ct.* (2002) 27 Cal.4th 537, 575-76.)

To satisfy the "reasonably germane" standard, an initiative's provisions need only be "auxiliary to and promotive of its main

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purpose, or [have] a necessary and natural connection with such purpose." (*Fair Political Practices Com. v. Super. Ct.*, *supra*, 25 Cal.3d at p. 39; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100 ["[A] measure complies with the rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment."].) The "reasonably germane" standard is also "applied in an accommodating and lenient manner so as not to unduly restrict the people's right to package provisions in a single bill or initiative." (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 829, quotations omitted.)

Proposition 22's amendment provisions easily satisfy the "reasonably germane" standard. The amendment provisions pertain to collective bargaining issues, which are "functionally related" to the rights and benefits of app-based drivers. Moreover, the amendment provisions promote the initiative's purpose of providing a comprehensive set of alternative protections to app-based drivers, which could be impacted by collective bargaining legislation. Proposition 22's title and statement of purpose state that its objectives are, among others, "[t]o protect the basic legal right of Californians to choose to work as independent contractors" with app-based companies, and to "require rideshare and delivery network companies to offer new protections and benefits for app-based rideshare and delivery drivers." (Bus. & Prof. Code, § 7450, subds. (a) & (c), AA at 32; AA at 896.) The challenged amendment provisions are "reasonably germane" to these stated purposes because they

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attempt to preserve the right of Californians to choose to work and operate as independent contractors, free from any number of obligations or limits on self-representation, and prevent the imposition of new regulations on individuals based on their status as independent contractors working in this area.

Under a single subject challenge, courts do not "review initiatives by attempting to predict whether each section will further the initiative's purpose," but instead whether the provisions are "reasonably germane" to the general purpose of the initiative. (*Calfarm Ins. Co. v. Deukmejian*, *supra*, 48 Cal.3d at p. 841.) Here, by limiting the Legislature "from undoing what the people have done, without the electorate's consent," (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025), the amendment provisions promote and protect Proposition 22's stated purposes.

The trial court also focused on the fact that "[n]o other part of Proposition 22 deals with collective bargaining rights other than Section 7465, subdivision (c)(4)," concluding that this is "utterly unrelated" to Proposition 22's "stated common purpose." (AA at 896.)[11] But the case law regarding single subject claims

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[11] Petitioners similarly argued that the amendment provisions somehow violate the single subject rule because they "impose restrictions that are not substantively addressed in the measure." (AA at 28 ¶ 53.) But as *Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 252, teaches, courts "ordinarily should assume that the voters who approved a [ballot measure] have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered." (Accord *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349 [courts "must
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does not require that a particular provision be related to all other provisions in the challenged measure. (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 828 [noting that the single subject rule "does not require that each of the provisions of a measure effectively interlock in a functional relationship"].) To satisfy the "reasonably germane" standard, it suffices for an initiative's provisions to be "auxiliary to and promotive of its main purpose, or [have] a necessary and natural connection with such purpose." (*Fair Political Practices Com. v. Super. Ct.*, *supra*, 25 Cal.3d at p. 39.)

The trial court's strained analysis runs counter to the "liberal interpretive tradition" courts have accorded to initiatives. Cases interpreting the single-subject rule illustrate this "liberal interpretive tradition" of "sustaining statutes and initiatives which fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." (*Brosnahan v. Brown*, *supra*, 32 Cal.3d at p. 253; *Amador Valley J. Union High Sch. Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at p. 232 ["We avoid an overly strict judicial application of the single-subject requirement, for to do so could well frustrate legitimate efforts by the people to accomplish integrated reform measures."].) For example, in *Manduley v. Superior Court* (2002) 27 Cal.4th 537, the initiative

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assume that the voters duly considered and comprehended these materials"].)

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measure at issue "included 13 provisions relating to criminal gang activity, four provisions amending the Three Strikes law, and 17 provisions amending Welfare and Institutions Code sections pertaining to the juvenile justice system." (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 830.) Even though some of the Three Strikes reforms "at first blush" did not "bear an obvious relationship" to the initiative's purpose, the Supreme Court decided "upon closer scrutiny we cannot properly conclude that they are not reasonably related to the goal of the initiative." (*Manduley v. Super. Ct.*, *supra*, 27 Cal.4th at p. 577.) Similarly, in *Evans v. Superior Court In & For Los Angeles County* (1932) 215 Cal. 58, the Court upheld a law with over 1,700 sections which dealt with the general subject of "probate law." Petitioners' challenge here, if successful, would impermissibly "preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Senate of the State of Cal. v. Jones* (1999), 21 Cal.4th 1146, 1157.)

CONCLUSION

For these reasons, the Court should reverse the trial court's judgment, and remand with instructions to enter judgment for Defendants.

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February 24, 2022

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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF OF DEFENDANTS-APPELLANTS STATE OF CALIFORNIA AND DIRECTOR HAGEN** uses a 13 point Century Schoolbook font and contains **11,069** words.

February 24, 2022

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***Castellanos et al. v. State of California et al.***
Case No.: **A163655**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On February 24, 2022, I electronically served the attached

OPENING BRIEF OF DEFENDANTS-APPELLANTS STATE OF CALIFORNIA AND DIRECTOR HAGEN

by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on February 24, 2022, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

The Honorable Frank Roesch
Alameda County Superior Court
1221 Oak Street
Department 17
Oakland, CA 94612

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 24, 2022, at San Francisco, California.

M. Mendiola	M. Mendiola
Declarant	Signature

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