No. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HECTOR CASTELLANOS, JOSEPH DELGADO, SAORI OKAWA, MICHAEL ROBINSON, SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL, AND SERVICE EMPLOYEES INTERNATIONAL UNION,

Petitioners,

v.

STATE OF CALIFORNIA and LILIA GARCÍA-BROWER, in her official capacity as the Labor Commissioner of the State of California,

Respondents.

EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR EXPEDITED REVIEW

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EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR EXPEDITED REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

INTRODUCTION

Petitioners respectfully petition this Court for a writ of mandate declaring Proposition 22, which passed at the November 3, 2020 statewide election, invalid and unenforceable.

Proposition 22 is a statutory initiative that designates drivers who work for app-based companies like Uber, Lyft, and DoorDash as independent contractors rather than employees if certain criteria are satisfied.[1] Although titled the "Protect App-Based Drivers and Services Act," Proposition 22 actually withdraws minimum employment protections from hundreds of thousands of California workers. That result would be profoundly harmful to many workers, but not necessarily unconstitutional, if the measure had not overreached in several significant ways. As demonstrated below, however, the drafters of Proposition 22 improperly attempted to use a statutory initiative to usurp the constitutional authority of the Legislature under articles IV and XIV of the state Constitution, as well as the inherent authority of this Court to determine what is an initiative amendment within the meaning of article II, section 10.

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[1] Petitioners' Request for Judicial Notice ("Pet. RJN"), Exh. A at p. 1.

Article XIV, section 4 of the California Constitution grants to the Legislature "plenary power, unlimited by any provision of this Constitution" to establish and enforce a complete system of workers' compensation. (Cal. Const., art. XIV, § 4.) The courts have held that section 4's grant of authority "unlimited by any provision of this Constitution" constitutes a pro tanto repeal of conflicting constitutional provisions, one that therefore precludes interference with the Legislature's authority through use of a statutory initiative like Proposition 22. By purporting to remove app-based drivers from California's workers' compensation system – and by purporting to limit the Legislature's authority to extend workers' compensation benefits to this group of workers in the future – Proposition 22 conflicts with article XIV, section 4. Under the express terms of Proposition 22 itself, the conflict requires that Proposition 22 be invalidated in to.

Proposition 22 invades the authority of the judiciary as well. Article II, section 10 prohibits the Legislature from amending an initiative statute without voter approval unless the initiative permits such amendment. It is the courts' role, as the final arbiter of the Constitution, to determine whether a statute passed by the Legislature constitutes an "amendment" of an initiative statute within the meaning of section 10. Yet, in an obscure provision at the end of the measure, Proposition 22 purports to define as "amendments" any statutes concerning two areas of law not otherwise addressed in the measure's substance.

In particular, Proposition 22 defines as an "amendment" any statute that authorizes an entity or organization to represent app-based drivers, including a union that could bargain collectively for better wages and benefits, as well as any statute that regulates app-based drivers differently based on their classification status. No substantive provisions in Proposition 22 address either of these subjects. Under this Court's precedents, legislation that addresses these subjects therefore would not "amend" Proposition 22 for purposes of the state Constitution. Yet the drafters of Proposition 22 claim the right to declare any legislation to address these subjects as "amendments" that can only be enacted by a nearly impossible seven-eighths supermajority vote. In doing so, the drafters have impermissibly usurped this Court's authority to "say what the law is" by determining what constitutes an "amendment" and have impermissibly invaded the Legislature's broad authority to legislate in areas not substantively addressed by the initiative.

Finally, Proposition 22 violates the single-subject rule by burying these cryptic amendment provisions on subjects not substantively addressed in the measure, and in language that most voters would not understand. The measure grossly deceived the voters, who were not told they were voting to prevent the Legislature from granting the drivers collective bargaining rights, or to preclude the Legislature from providing incentives for companies to give app-based drivers more than the minimal wages and benefits provided by Proposition 22. If allowed to

stand, the ploy will be repeated in other initiatives as an effective means to slip potentially unpopular provisions past the voters.

These fatal defects in Proposition 22 affect not only app-based drivers and the public they serve, but the initiative process itself. This Court has stated that judicial review of the substantive constitutionality of initiative measures should take place only after the election. Now that the election is over, the Court should exercise original jurisdiction over this case and hold Proposition 22 invalid. A statutory initiative cannot limit legislative authority that the Constitution provides is "unlimited" or alter the separation of powers provided by the state Constitution, and no initiative, statutory or constitutional, can deceive voters into limiting the powers of the Legislature or the judiciary.

NEED FOR URGENT RELIEF FROM THIS COURT

1. Original relief is necessary in this Court rather than a lower court because this matter presents pure legal issues of broad public importance that require speedy and final resolution, namely: (a) whether the Legislature's broad and otherwise "unlimited" authority to provide "for a complete system of workers' compensation" under article XIV, section 4 of the Constitution can be circumscribed by a statutory initiative; (b) whether a statutory initiative can define what is an amendment within the meaning of article II, section 10 of the Constitution or whether that authority rests solely with the courts; (c) whether a statutory initiative may define "amendments" in a way that precludes the Legislature from

enacting legislation pursuant to its constitutional authority to act by majority vote when the initiative itself contains no substantive provisions addressing the same issue; and (d) whether Proposition 22's restrictions on the judiciary and the Legislature violate the single-subject rule and/or render the initiative impermissibly deceptive to voters.

2. These legal issues need prompt and definitive resolution now because Proposition 22 will have profound and immediate effects on the lives of hundreds of thousands of app-based drivers and their families. Under Proposition 22, app-based drivers will be denied the minimum employment protections, including worker's compensation benefits, to which these workers otherwise would be entitled by law. The harm caused to individuals by the denial of such protections and benefits could not be effectively remedied after the fact.

3. Urgent relief from this Court is also necessary as a matter of judicial economy because many cases now pending before state and federal courts and arbitrators, including cases where statewide injunctive relief has been ordered, turn on whether app-based drivers are employees or independent contractors for purposes of California law. For example, the California Attorney General and the City Attorneys of Los Angeles, San Francisco, and San Diego have obtained injunctive relief, which was affirmed on appeal, against the two largest rideshare companies, Uber and Lyft, for misclassifying their drivers as independent contractors. (*People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, opn. mod. and pet.

for review pending, pet. filed Dec. 1, 2020, S265881.) A petition regarding that case is presently before this Court. (*Id.*) The Labor Commissioner has filed similar actions. (*Lilia García-Brower v. Uber* (Sup. Ct. Alameda County, 2020, No. RG20070281); *Lilia García-Brower v. Lyft* (Sup. Ct. Alameda County, 2020, No. RG20070283).) The San Diego City Attorney has obtained injunctive relief against Instacart that is now pending on appeal. (*People v. Maplebear, Inc. dba Instacart* (4th App. Dist., D077380, app. pending).) The San Francisco District Attorney has filed a similar action against DoorDash and recently withdrew a preliminary injunction motion without prejudice after the adoption of Proposition 22. (*People v. DoorDash, Inc.* (Sup. Ct. S.F. City and County, 2020, No. CGC20584789).) There is pending litigation in the Ninth Circuit Court of Appeals about the classification of app-based drivers, in which the parties have recently briefed the impact of Proposition 22 on the case. (*Olson v. State of California* (9th Cir.) No. 20-cv-55267.) Tens of thousands of individual app-based drivers have also filed misclassification claims with arbitrators or been compelled to individual arbitrations. (*See*, *e.g.*, *Postmates Inc. v. 10,356 Individuals,* 2020 WL 1908302 (C.D. Cal. Apr. 15, 2020).) Only a prompt and definitive ruling by this Court on the constitutionality of Proposition 22 could avoid years of legal uncertainty and the potential litigation of the same legal issues in multiple fora.

4. Unless this Court acts, the Legislature will also be chilled or prevented from exercising its constitutional

authority. Without a definitive answer from this Court about whether Proposition 22's essentially impossible seven-eighths threshold must be met, members of the Legislature will not commit the considerable time and resources necessary to develop legislation to help app-based drivers by authorizing collective representation or bargaining or by creating incentives for companies to treat them as employees or improve their conditions as independent contractors. The classification status of workers has been a major focus of the Legislature's efforts over the past two years. Unless this Court exercises its original jurisdiction, any legislative efforts to protect app-based drivers would likely be put in limbo for many years.

5. For these reasons, petitioners respectfully request that the Court exercise its original jurisdiction by issuing an order to show cause why relief should not be granted and by requiring respondents to file their responses within 30 days, with petitioners' reply brief due within 15 days after respondents' brief is filed so that final relief can be granted expeditiously.

JURISDICTION

6. This Court has original jurisdiction pursuant to article VI, section 10 of the California Constitution, Code of Civil Procedure sections 1085 and 1086, and Rule 8.486 of the California Rules of Court to decide an issue where a case presents issues of great public importance that must be resolved promptly. (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 451-453.) This is such a case because it involves legal issues of great statewide importance with implications for multiple branches of

government, both immediately and in the future. (*See Legislature v. Eu* (1991) 54 Cal.3d 492, 500 [Supreme Court exercises original mandamus jurisdiction in challenges to state initiatives].)

7. Petitioners are entitled to a writ of mandate because they do not have a "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.)

PARTIES

8. Petitioner HECTOR CASTELLANOS is a California resident who has worked for about five years as a driver for app-based companies including Uber and Lyft. He would be directly affected by Proposition 22.

9. Petitioner JOSEPH DELGADO is a California resident and a regular consumer of the services of companies that use app-based drivers. He is also a California taxpayer.

10. Petitioner SAORI OKAWA is a California resident who has worked for approximately three years as a driver for app-based companies including Uber, Lyft, DoorDash, and Instacart. She stopped driving for Uber and Lyft earlier this year due to the COVID pandemic. She currently drives for DoorDash and Instacart. She would be directly affected by Proposition 22.

11. Petitioner MICHAEL ROBINSON is a California resident who worked for about five years as a driver for Lyft. Petitioner has temporarily stopped driving for app-based companies because of the COVID pandemic, but intends to

resume driving in the future. He would be directly affected by Proposition 22.

12. Petitioner SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL ("SEIU California") is comprised of SEIU local unions representing over 700,000 California workers throughout the state economy. SEIU California's mission is to secure economic fairness for working people and create an equitable, just and prosperous California. SEIU California's affiliated local unions include SEIU Local 721, which represents over 95,000 workers in Southern California, and SEIU Local 1021, which represents nearly 60,000 workers in Northern California. SEIU Local 721 supports gig economy workers through its project Mobile Workers Alliance. Mobile Workers Alliance includes approximately 18,000 Southern California app-based drivers and provides drivers with resources to access and organize for better employment protections and benefits. Mobile Workers Alliance engages in organizing, service, advocacy, and educational activities on the local and state level. SEIU Local 1021 supports gig workers through its project We Drive Progress, a movement joined by over 6,500 app-based drivers that fights for better wages, benefits, and working conditions for drivers. SEIU California also supports other gig workers' advocacy projects that advocate for app-based drivers, including Gig Workers Rising.

13. Petitioner SERVICE EMPLOYEES INTERNATIONAL UNION ("SEIU") is a labor organization of about 2 million members that is dedicated to improving the lives

of workers and their families and creating a more just and humane society. SEIU has affiliates throughout the United States, including SEIU California and SEIU Locals 721 and 1021.

14. Respondent STATE OF CALIFORNIA is the entity identified in section 1 of article III of the State Constitution in which all of the powers of government are vested pursuant to that article, including the power to enforce statutes enacted through the initiative process. The STATE OF CALIFORNIA may not enforce a statute enacted in violation of the State Constitution.

15. Respondent LILIA GARCÍA-BROWER is the California Labor Commissioner. The Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement) is responsible for the enforcement of California's minimum labor standards laws, including the requirement that employers maintain worker's compensation coverage. GARCÍA-BROWER is sued in her official capacity only. On information and belief, unless this Court grants relief, GARCÍA-BROWER will rely on Proposition 22 to refuse to enforce California's minimum labor standards law to protect app-based drivers, thereby depriving them of legal protections to which they otherwise would be entitled.

BACKGROUND

16. In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), this Court resolved a dispute about one aspect of the proper test for employee status for purposes of the wage orders issued by the

Industrial Welfare Commission. The Court concluded that a worker who is an employee under the "ABC" test is an employee, rather than an independent contractor, for purposes of the wage orders. (*Id.*)

17. The Legislature codified the *Dynamex* decision in Assembly Bill 5 (AB 5), which became effective January 1, 2020, and Assembly Bill 2257 (AB 2257), which became effective September 4, 2020. This legislation also adopted the "ABC" test for employment status for purposes of the Labor Code and Unemployment Insurance Code, including minimum wages, paid sick days, anti-retaliation protections, workers' compensation, and unemployment insurance purposes.

THE PROVISIONS OF PROPOSITION 22

18. Proposition 22 was written and funded primarily by a group of wealthy app-based companies that rely on drivers to provide services, including Uber, Lyft and DoorDash. The measure was approved by voters on November 3, 2020.

19. Proposition 22 provides that "app-based drivers," i.e., drivers who work for transportation and delivery network companies such as Uber, Lyft and DoorDash, are independent contractors rather than employees if certain criteria are satisfied. (New Bus. & Prof. Code § 7451.)[2] Because the measure expressly states that it applies notwithstanding existing law, it thereby excludes these "app-based drivers" from the

[2] Hereinafter, unspecified statutory citations are to the Business and Professions Code.

protections of the Industrial Welfare Commission's wage orders, the Labor Code, and the Unemployment Insurance Code.

20. Proposition 22 provides some alternative wage and healthcare standards for "app-based drivers" and requires companies to provide certain specific accident insurance and to adopt other measures. (New §§ 7452-7462.) The protections and benefits Proposition 22 affords to app-based drivers are inferior to those guaranteed to all employees.

21. Proposition 22 expressly preempts local governments from regulating "app-based driver" employment status and benefits. (New § 7464.)

22. Proposition 22 also precludes the Legislature from making amendments to the initiative unless the statute is "consistent with, and furthers the purpose" of the initiative and is approved by a seven-eighths vote of both houses of the Legislature. (New § 7465.)

23. Proposition 22 specifies two areas of legislation that must be treated as "amendments." (New § 7465(c)(3) & (4).)

24. Paragraph (3) of subdivision (c) of new section 7465 states that "[a]ny statute that prohibits app-based drivers from performing a particular rideshare service or delivery service while allowing other individuals or entities to perform the same rideshare service or delivery service, or otherwise imposes unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this [initiative] and must be enacted in compliance with the procedures governing amendments . . ."

25. Paragraph (4) of subdivision (c) of new section 7465 states that "[a]ny statute that authorizes any entity or organization to represent the interests 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 [initiative] and must be enacted in compliance with the procedures governing amendments . . ."

26. New section 7467(a) contains a standard severability clause, but section 7467(b) provides that if any "portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application" of new section 7451 – the operative provision that makes drivers independent contractors – is held invalid by any court of competent jurisdiction, "that decision shall apply to the entirety of the remaining provisions of this chapter, and no provision of this chapter shall be deemed valid or given force of law."

PROPOSITION 22 VIOLATES THE CALIFORNIA CONSTITUTION

27. Article XIV of the California Constitution makes liberal provision for the protection of workers by providing that the Legislature has the authority to "provide for minimum wages and the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers." (Cal. Const., art. XIV, § 1.)

28. Article XIV, section 4 further provides that "[t]he Legislature is hereby expressly vested with *plenary power,*

unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation . . . ." (Emphasis added.) Section 4 goes on to describe in great detail what a "complete system of workers' compensation" means, including "full provision" for the following: "securing safety in places of employment;" adequate medical care for injured workers; "adequate insurance coverage against liability to pay or furnish compensation;" "securing the payment of compensation" through establishment of an administrative body "with all the requisite governmental functions to determine any dispute or matter arising under such legislation," which, if the Legislature so chooses, can divest the superior courts of jurisdiction so long as review is available in the appellate courts. Section 4 states that "all of [these] matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government."

29. Proposition 22 conflicts with article XIV, section 4, by purporting to entirely remove app-based drivers from the "complete system of worker's compensation" the Legislature has extended to them and to limit the authority of the Legislature to extend such worker's compensation benefits to app-based drivers in the future. Because the Legislature has "plenary power, unlimited by any provision of this Constitution" to address worker's compensation, including occupational safety, an initiative statute cannot limit the Legislature's authority in this area.

30. Because Proposition 22 provides that "the entirety" of Proposition 22 is invalid if "any . . . application" of new section 7451 "is for any reason held to be invalid" (new Bus. & Prof. Code § 7467(b)), and new section 7451 is unconstitutional insofar as it purports to remove app-based drivers from the worker's compensation system and limit the Legislature's authority to address worker's compensation benefits for app-based drivers, the entirety of Proposition 22 must be invalidated.

31. Proposition 22 also purports to limit this Court's power to determine whether particular legislation constitutes an amendment to a statutory initiative for purposes of article II, section 10 of the State Constitution, which prohibits the Legislature from amending an initiative statute unless the initiative itself provides for amendments. (Cal. Const., art. II, § 10(c).) In previous cases, this Court has confirmed that the Legislature is free to enact laws addressing the general subject matter of an initiative, or a "related but distinct area" of law, so long as the legislation addresses conduct that an initiative measure "*does not specifically authorize or prohibit*." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, citing *Cnty. of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 830 & *People v. Cooper* (2002) 27 Cal.4th 38, 47, emphasis added.)

32. Paragraphs (3) and (4) of new section 7465(c) purport to declare that any legislation that authorizes the organization or representation of app-based drivers or that imposes regulations based on the drivers' classification status

constitutes an "amendment" under article II, section 10, such that it can only be enacted by seven-eighths vote of the Legislature and only if it furthers the purposes of Proposition 22. Under this Court's construction of article II, section 10(c), however, neither of the areas of legislation identified in paragraphs (3) or (4) of new section 7465(c) can be considered an "amendment" of Proposition 22, because legislation addressing the subjects would neither prohibit what the initiative authorizes, nor authorize what the initiative prohibits.

33. Although the voters have the power to set conditions for initiative amendments, they do not have the power to say whether legislation addressing a certain topic is in fact an amendment to the initiative. The courts have the final word in construing the state Constitution. (*People v. Jacinto* (2010) 49 Cal.4th 263, 269.)

34. Proposition 22 attempts to deprive the judiciary of its role under our constitutional system to determine what constitutes an "amendment" under article II, section 10. In doing so, and by requiring approval of seven-eighths of the Legislature to legislate in these areas, Proposition 22 impermissibly restricts the authority of the Legislature to act by simple majority vote in areas not specifically addressed by the initiative.

35. Article II, section 8(d) of the state Constitution provides that "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." The general rule is that all provisions of a proposed measure must be "'reasonably germane' to each other,' and to the general

purpose or object of the initiative." (*Senate v. Jones* (1999) 21 Cal.4th 1142, 1157.)

36. The purpose of the single-subject rule is to avoid voter confusion and deception. (*Id.* at p. 1156.)

37. The amendment provision of Proposition 22 is a classic example of intentional voter deception. The provision is not mentioned anywhere in the ballot title and summary, analysis, or ballot arguments regarding the measure. Voters who read the measure will not understand how the amendment provision relates to the operational parts of the initiative nor what it means for a measure to define what constitutes an amendment. In short, the voters will have absolutely no understanding that a "yes" vote is a vote to severely limit the judiciary's oversight over the initiative and the Legislature's authority to permit collective representation of or bargaining for app-based and delivery drivers.

38. If initiatives are permitted to define areas of legislation as "amendments" without substantively addressing them, future initiative drafters will try to use this approach to prevent judicial oversight and/or disguise serious restrictions on the Legislature's law-making authority in areas undisclosed to the voters.

FIRST CAUSE OF ACTION

(Violation of Cal. Const., art. XIV)

39. Petitioners hereby reallege and incorporate paragraphs 1 through 38 above as if fully set forth herein.

40. Because Proposition 22 purports to designate app-based drivers as independent contractors, it deprives them of the protections passed by the Legislature pursuant to its authority under article XIV of the State Constitution.

41. Although the power of initiative is generally coextensive with that of the Legislature, article XIV, section 4 grants the Legislature "plenary power, *unlimited by any provision of this Constitution*, to create and enforce a complete system of workers' compensation . . . ." Inherent in the Legislature's plenary authority is the power to pass statutes delineating which workers are employees covered by the complete system of workers' compensation. That authority cannot be limited by a statutory initiative.

42. This Court has interpreted similar language in article XII, section 5 giving the Legislature power to *enlarge* the jurisdiction of the Public Utilities Commission, as permitting use of the initiative power to do the same. The Court stated, however, that it was *not* holding that a statutory initiative could be used to restrict the Legislature's authority, "unlimited by any provision of [the] Constitution," to grant jurisdiction to the Public Utilities Commission. Instead, the Court said that in the event of a conflict between the Legislature's power and a statutory initiative, the conflict should "be resolved through application of the relevant constitutional provision or provisions to the terms of the specific legislation at issue." (*Independent Energy Producers, Inc. v. McPherson* (2006) 38 Cal.4th 1020, 1044, fn. 9.) At a minimum, that means that a statutory initiative cannot

countermand, or restrict the Legislature from adopting, legislation pursuant to a constitutional provision that grants the Legislature "plenary power, unlimited by any provision of [the] Constitution." If an initiative statute countermands or restricts the Legislature's authority to enact statutes as to that same subject, the constitutional provision conferring "unlimited" authority upon the Legislature must prevail.

43. Article XIV, section 4 unequivocally states that the provisions for the creation of a complete system of worker's compensation "are expressly declared to be the social public policy of this State, binding upon all departments of the state government." Because Proposition 22 purports to countermand or limit the Legislature's otherwise "unlimited" constitutional authority to include app-based drivers in a complete system of worker's compensation, Proposition 22 is unconstitutional.

44. The severability clause contained in new section 7467(b) of Proposition 22 provides that if any portion or application of new section 7451, which declares that app-based drivers are independent contractors, is held invalid, the entire measure falls. Because the application of new section 7451 to workers' compensation legislation is unconstitutional, the entirety of Proposition 22 is invalid. Moreover, even without that provision, standard severability analysis would require that the entire measure be invalidated.

45. Under article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086, the Court should exercise its original jurisdiction, issue a writ of

mandate invalidating new section 7451 and holding that because new section 7451 is not severable from the remainder of Proposition 22, the entire measure is invalid.

SECOND CAUSE OF ACTION

(Violation of Separation of Powers Principles in Cal. Const., art. III, § 3)

46. Petitioners hereby reallege and incorporate paragraphs 1 through 45 above as if fully set forth herein.

47. Paragraphs (3) and (4) of subdivision (c) of new section 7465 of the Business and Professions Code, enacted by Proposition 22, are invalid because they purport to deprive the courts of their authority under article VI of the California Constitution to interpret the Constitution. Paragraphs (3) and (4) of subdivision (c) of new section 7465 purport to define certain legislative actions as "amendments" to Proposition 22 within the meaning of article II, section 10(c) of the Constitution, even though such legislative actions are not "amendments" under judicial precedents interpreting the Constitution. Proposition 22 therefore attempts to use a statutory initiative to restrict the authority of the courts to interpret the state Constitution in violation of the separation of powers principles of article III, section 3 of the Constitution.

48. Under article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086, the Court should exercise its original jurisdiction and issue a writ of mandate invalidating paragraphs (3) and (4) of subdivision (c) of section 7465.

THIRD CAUSE OF ACTION

(Violation of the Legislature's Power to Set Its Own Rules and to Enact Legislation by Majority Vote Cal. Const., art. II, § 10(c) & art. IV, §§ 1, 7, 8)

49. Petitioner hereby realleges and incorporates paragraphs 1 through 48 above as if fully set forth herein.

50. Paragraphs (3) and (4) of subdivision (c) of new section 7465 of the Business and Professions Code, enacted by Proposition 22, impermissibly attempt to define certain areas of legislation on matters not substantively addressed in the measure as "amendments," and thereby to limit the Legislature's constitutional authority to pass bills by majority vote unless the Constitution or the Legislature's own rules adopted pursuant to article IV, section 7 require otherwise. Paragraphs (3) and (4) of subdivision (c) of new section 7465 also violate the majority vote provision in article IV, section 8(b)(3).

51. Under article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086, the Court should exercise its original jurisdiction and issue a writ of mandate invalidating paragraphs (3) and (4) of subdivision (c) of section 7465.

FOURTH CAUSE OF ACTION

(Violation of Single-Subject Rule – Cal. Const., art. II, § 8(d))

52. Petitioner hereby realleges and incorporates paragraphs 1 through 51 above as if fully set forth herein.

53. Proposition 22 violates the single-subject requirement of article II, section 8 of the State Constitution

because although it merely purports to designate app-based drivers as independent contractors entitled to certain benefits, it also attempts to impose other restrictions that are not substantively addressed in the measure. The latter provisions are not reasonably germane to the purpose of the initiative, which the measure describes solely in terms of protecting the rights of drivers to work as independent contractors with benefits designed to be minimums and for the protection of the public. (Pet. RJN, Exh. A at p. 1.) Worse, by burying these provisions at the end of the initiative and describing them as amendments that the Legislature may pass only by a seven-eighths vote, the measure purposely and impermissibly deceived the voters into adopting restrictions they neither knew about nor understood.

54. Under article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086, the Court should exercise its original jurisdiction and issue a writ of mandate invaliding Proposition 22 based on the violation of article II, section 8(d) of the State Constitution.

WHEREFORE, petitioners pray for judgment as follows:

1. That this Court issue a writ of mandate directing respondents to refrain from giving effect to Proposition 22;

2. That this Court grant petitioners their reasonable attorney's fees; and

3. That this Court grant such other, different, or further relief as the Court may deem just and proper.

Dated: January 12, 2021

Respectfully submitted,

OLSON REMCHO, LLP

ALTSHULER BERZON LLP

SERVICE EMPLOYEES
INTERNATIONAL UNION

By: /s/ Robin B. Johansen

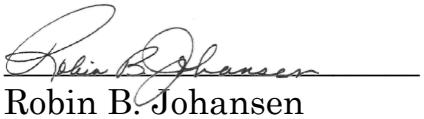
Attorneys for Petitioners
Hector Castellanos, Joseph Delgado, Saori Okawa, Michael Robinson, Service Employees International Union California State Council, and Service Employees International Union

VERIFICATION

I, Robin B. Johansen, declare:

I am one of the attorneys for petitioners Hector Castellanos, Joseph Delgado Saori Okawa, Michael Robinson, Service Employees International Union California State Council and Service Employees International Union. I make this verification for the reason that petitioners are absent from the county where I have my office. I have read the foregoing Emergency Petition for Writ of Mandate and Request for Expedited Review and believe that the matters therein are true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this twelfth day of January, 2021, at Bainbridge Island, Washington.



Robin B. Johansen

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

A. California Law Prior To Proposition 22

In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex)*, this Court adopted a three-part test to determine whether a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Under this "ABC" test, workers are presumed to be employees, and a company must prove that a worker is properly classified as an independent contractor by showing that the worker is: (A) free from the employer's control; (B) performing work outside the usual course of the employer's business; and (C) independently established in a trade or business to perform the type of work provided. Failure to prove any one of the three parts of the test means that the worker is an employee rather than an independent contractor.

In September 2019, the Legislature codified the *Dynamex* decision in Assembly Bill 5 (AB 5), which became effective January 1, 2020. (Stats. 2020, ch. 296.) In AB 5 the Legislature exercised its constitutional authority under article XIV to protect "any or all workers" by adding the "ABC" test to the Labor Code and Unemployment Insurance Code for virtually all purposes, including workers' compensation, occupational safety and health, and unemployment insurance.

Transportation network companies like Uber and Lyft and delivery network companies like Instacart and

DoorDash have consistently claimed that their drivers were not covered by AB 5 and refused to treat them as employees, just as they consistently took the position that their drivers were not employees under previous tests for employment. In *People v. Uber Technologies, Inc.*,[3] the California Attorney General sued Uber and Lyft for misclassifying their drivers as independent contractors in violation of AB 5. In a published opinion, the First District Court of Appeal upheld the Superior Court's preliminary injunction restraining Uber and Lyft from "'classifying their Drivers as independent contractors in violation of [Assembly Bill 5]," and from "violating any provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission with regard to their Drivers." (*Id.* at p. 281.) The Court of Appeal denied the companies' rehearing petitions without prejudice to their right to file a motion in the trial court to vacate the injunction in light of Proposition 22. (*Id.*, Order dated Nov. 20, 2020.) A petition regarding that case is pending in this Court. (No. S265881 .)

There are also pending actions seeking or having obtained injunctive relief against transportation or delivery network companies filed by the Labor Commissioner, the San Diego City Attorney, and the San Francisco District

[3] *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, opn. mod. and pet. for review filed Dec. 1, 2020, No. S265881.

Attorney.[4] There is pending litigation in the Ninth Circuit Court of Appeals about the constitutionality of AB 5, in which the parties have recently briefed the impact of Proposition 22 on the case. (*Olson v. State of California* (9th Cir.) No. 20-cv-55267.) Tens of thousands of individual app-based drivers have also filed misclassification claims with arbitrators or been compelled to individual arbitrations. (*See*, *e.g.*, *Postmates Inc. v. 10,356 Individuals*, 2020 WL 1908302 (C.D. Cal. Apr. 15, 2020).)

B. Proposition 22

The voters approved Proposition 22 at the November 3, 2020 election, and the Secretary of State certified its passage on December 11, 2020.[5] The measure took effect five days later, on December 16, 2020.

Proposition 22 provides that "app-based drivers" – drivers who work for transportation or delivery companies like Uber, Lyft, DoorDash, and Instacart and who meet criteria set out in the initiative – are independent contractors rather than employees. (New Bus. & Prof. Code, § 7451.)[6] Because this provision expressly states that it

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[4] *Lilia García-Brower v. Uber* (Sup. Ct. Alameda County, 2020, No. RG20070281); *Lilia García-Brower v. Lyft* (Sup. Ct. Alameda County, 2020, No. RG20070283); *People v. Maplebear, Inc. dba Instacart* (4th App. Dist., D077380, app. pending); *People v. DoorDash, Inc.* (Sup. Ct. S.F. City and County, 2020, No. CGC20584789).

[5] *See* https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf.

[6] Hereinafter, unspecified statutory citations are to the Business and Professions Code.

applies "notwithstanding any other provision of law," it exempts app-based drivers from the numerous minimum labor standards provisions that apply to employees.

Proposition 22 adopts some alternative minimum wage and healthcare standards for app-based drivers and requires companies to provide certain specific accident insurance coverage. (New §§ 7453-7455.) It requires companies to adopt certain policies, including anti-discrimination and sexual harassment prevention, and to perform background checks. (New §§ 7456-7458.) New section 7453 adopts an "earnings floor," but also states that the "guaranteed minimum level of compensation" does not "prohibit app-based drivers from earning a higher compensation." The insurance coverage provisions also describe minimums. (New § 7455.) [7]

Proposition 22 precludes amendments to the initiative unless the statute is "consistent with, and furthers the purpose" of the initiative and is approved by a seven-eighths vote of the Legislature. (New § 7465(a).) Paragraph (3) and (4) of subdivision (c) of section 7465 further specify that two areas of legislation *must* be treated as "amendments."

> (3) Any statute that prohibits app-based drivers from performing a particular rideshare service or delivery service while allowing other individuals or entities to perform the same rideshare service or delivery service, or otherwise

[7] The Initiative also preempts local governments from regulating "app-based driver" employment status and benefits. (New § 7464.)

> imposes unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this [initiative] and must be enacted in compliance with the procedures governing amendments. . . .
>
> (4) Any statute that authorizes any entity or organization to represent the interests 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 [initiative] and must be enacted in compliance with the procedures governing amendments. . . .

Neither of the areas identified in paragraphs (3) and (4) of new section 7465(c) is addressed in any way by Proposition 22's substantive terms. As discussed below, existing case law construing article II, section 10(c) of the California Constitution would thus not limit future legislation in these areas.

ARGUMENT

I.

THE COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION

Article VI, section 10 gives this Court original jurisdiction in proceedings for extraordinary relief in the nature of mandamus and prohibition. Just as this Court has exercised that jurisdiction to determine the validity or applicability of

various statewide initiative measures in the past,[8] it is necessary for the Court to do so now for several reasons.

First, Proposition 22 will have profound and immediate effects on the lives of hundreds of thousands of drivers and their families. Under AB 5 and AB 2257, these drivers would be entitled to all the protections afforded employees under California law. At a time when many Californians are driving for companies like Uber and Lyft and DoorDash because they cannot find other work, Proposition 22 threatens to leave them without the protections of the workers' compensation system and myriad other employment provisions of California law. The real harms caused by the absence of such protections cannot be remedied after the fact. (*See People v. Uber Technologies, Inc.,* 56 Cal.App.5th 266, 304-305, 309-310, *opn. mod. and pet. for review pending, pet. filed Dec. 1, 2020, S265881* [discussing the irreparable harms to workers and the public from misclassification of app-based drivers].) By exercising its original

[8] *See*, *e.g.*, *Briggs v. Brown* (2017) 3 Cal.5th 808 (upholding Proposition 66 but ruling that some provisions were directory, not mandatory); *Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607 (holding Proposition 73 could not be reformed to correct federal constitutional violation); *Legislature v. Eu* (1991) 54 Cal.3d 492 (upholding term limits provision of Proposition 140 but prohibiting application of legislative retirement provisions to current legislators); *Calfarm Ins. Company v. Deukmejian* (1989) 48 Cal.3d 805 (holding certain insurance reform provisions of Proposition 103 invalid); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Education* (1978) 22 Cal.3d 208 (upholding validity of Proposition 13 property tax limits).

jurisdiction, this Court can issue a prompt and definitive decision regarding Proposition 22's validity.

Second, urgent relief from this Court is required to avoid years of unnecessary litigation in state and federal courts and in arbitration proceedings about the application of Proposition 22. As stated above, there are pending enforcement actions by the Attorney General and other public prosecutors, pending challenges by app-based companies to AB 5, and pending claims by many thousands of individual drivers. One such case has reached this Court, where Uber and Lyft have filed petitions for review asking the Court to order the First District Court of Appeal to vacate its decision upholding a pre-Proposition 22 preliminary injunction that prohibited the companies from treating their workers as independent contractors. In other proceedings, the defendant companies have argued that Proposition 22 is retroactive,[9] and therefore requires dismissal of all claims alleging misclassification before the date of its enactment, meaning that the impact of the measure will be litigated even for claims that solely involve pre-Proposition 22 liability. The sheer volume of such claims, which are pending in many courts and in tens of thousands of individual arbitrations, counsels in favor of a prompt decision by this Court on the constitutionality of Proposition 22.

Third, as explained more fully below, the amendment provisions of the measure impermissibly restrict the Legislature's

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[9] *See People v. DoorDash, Inc.* (Sup. Ct. S.F. City and County, 2020, No. CGC20584789); demurrer filed Dec. 21, 2020.

authority to enact legislation on matters that are not substantively addressed in the initiative. Enactment of legislation requires considerable effort and investment of resources, particularly in a time of pandemic. Before undertaking that effort and expending those resources, members of the Legislature who may wish to introduce legislation to authorize the drivers to bargain collectively for better wages and benefits, for example, need to know whether such an effort is barred by the initiative. Even if that were not the case, the effect of an initiative on the Legislature's constitutional authority to provide employment protection for "any and all workers" under article XIV, section 4 of the California Constitution is a matter of great public importance that requires final resolution by this Court.

Finally, Proposition 22 poses an immediate threat to the integrity of the initiative process. By burying a restriction on representation or collective bargaining in its "amendment" provision, Proposition 22 has shown other initiative proponents how to deceive the voters into adopting something they might not otherwise approve. Initiatives are already being drafted and submitted for the 2022 election. Unless this Court acts, drafters of new measures may very well adopt the same strategy used in Proposition 22. In order to protect the initiative process itself, the Court should stop that practice before it spreads.

Given this Court's jurisprudence discouraging pre-election challenges to statewide initiative measures,[10] questions about Proposition 22's constitutional validity had to await its adoption. Those questions are worthy of this Court's consideration and should be answered definitively now.

For these reasons, petitioners respectfully request that the Court grant expedited review, as it has done in the past,[11] and issue an order to show cause setting a briefing schedule as set forth above.

II.

PROPOSITION 22 VIOLATES ARTICLE XIV OF THE CALIFORNIA CONSTITUTION

The centerpiece of Proposition 22 is its provision that "[n]otwithstanding any other provision of law, including . . . the Labor Code, . . . and any orders, regulations, or opinions of . . . . any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee" if certain conditions are satisfied. (New § 7451.) Under Proposition 22, the Legislature is forbidden from adopting statutes that would countermand this centerpiece provision, absent subsequent approval by the voters, because Proposition 22 provides that "[a]ny statute that amends Section 7451 does not further the purposes of [Proposition 22]."

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[10] *See*, *e.g.*, *Independent Energy Producers. Inc. v. McPherson* (2006) 38 Cal.4th 1020, 1024-1025.

[11] *See, e.g.*, *Strauss v. Horton* (2009) 46 Cal.4th 364, 399 (denying stay of Proposition 8, but setting expedited briefing schedule).

(New § 7465(c)(2).) Proposition 22 further provides that even statutory amendments that *do* further its purposes may not be adopted by the Legislature through the normal constitutional process but instead require a seven-eighths vote of both the Assembly and the Senate. (New Bus. & Prof. Code, § 7465(a).)

Although Proposition 22 purports to govern "notwithstanding any other provision of law," it is a statutory initiative and therefore remains subject to constitutional constraints. One of these constraints is found in article XIV of the State Constitution, which grants the state Legislature specific authority to provide for "minimum wages and the general welfare of employees" (section 1) and vests "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation . . . ." (Cal. Const., art. XIV, §§ 1, 4.)

The Legislature has exercised this constitutional authority over the years, most recently with AB 5's enactment. Division 4 of the Labor Code (commencing with section 3200) contains the system of workers' compensation contemplated by article XIV, section 4. The definition of an employee for purposes of workers' compensation appears in subsection (i) of section 3351, which AB 5 expressly amended to incorporate the

test set out in this Court's decision in *Dynamex*.[12] In section 1 of AB 5, the Legislature left no doubt of its intent to make the *Dynamex* test applicable to the determination of whether a worker is entitled to workers' compensation:

> (e) It is also the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law, including a minimum wage, *workers' compensation if they are injured on the job*, unemployment insurance, paid sick leave, and paid family leave. By codifying the California Supreme Court's landmark, unanimous Dynamex decision, this act restores these important protections to potentially several million workers who have been denied these basic workplace rights that all employees are entitled to under the law.
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> (Pet. RJN, Exh. B, Assembly Bill 5, § 1, emphasis added.)

[12] Labor Code section 3351 includes within the definition of "employee" for workers' compensation purposes "any individual who is an employee pursuant to Section 2750.3," a provision of the Labor Code added by AB 5. AB 2257 revised certain provisions of AB 5 and added others. Although the Legislature neglected to amend Labor Code section 3351's reference to section 2750.3, its intent to make the ABC test applicable for purposes of workers' compensation is clear from the language of Labor Code section 2775.

To the extent Proposition 22 purports to provide an alternate, incomplete system of workers' compensation for certain workers, it effectively negates the Legislature's plenary and unlimited authority under article XIV and is therefore in direct conflict with that constitutional grant of authority. If companies like Uber and Lyft want to ask the voters to limit the Legislature's authority under article XIV with respect to app-based drivers, they must do so by constitutional amendment, not by statute.

A. Proposition 22 Unconstitutionally Limits The Legislature's Plenary Power To Provide For A Complete System Of Workers' Compensation

The opening sentence of section 4 of article XIV provides:

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

Section 4 defines a "complete system of workers' compensation" to include, among other things, "full provision" for "securing safety in places of employment;" for providing "medical,

hospital, and other remedial treatment as is requisite to cure and relieve from the effects of . . . injury;" and for "securing the payment of compensation" through establishment of an administrative body "with all the requisite governmental functions to determine any dispute or matter arising under such legislation" so as to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." Section 4 states that "all of [these] matters are expressly declared to be the social public policy of this State."

The voters first made provision for the Legislature to adopt a system of workers' compensation in the 1911 election, which also amended the Constitution to provide for the initiative, the referendum, and the recall. (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1041, fn. 7.)

In 1918, the voters amended article XX, section 21 to enlarge the Legislature's power by providing that when it comes to creating and enforcing "a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability," the Legislature's power is "plenary" and "unlimited by any provision of this Constitution." (Pet. RJN, Exh. C at pp. 2-3.)

This Court has made clear the sweeping effect of the 1918 amendment, saying "[i]t is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto'* of any state constitutional provisions which conflicted with that amendment." (*Hustedt v. Workers' Comp. Appeals Bd.* (1981)

30 Cal.3d 329, 343.)[13] Indeed, in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57, fn. 9, the Court questioned whether even a constitutional amendment – much less a statutory initiative like Proposition 22 – could impose a supermajority requirement on the Legislature's plenary authority to enact workers' compensation legislation. In that case, the Court was able to avoid the question by harmonizing the two provisions to avoid the conflict. (*Id.* at pp. 61-62.)[14]

In this case, the conflict is impossible to avoid. Section 4's grant of plenary authority to the Legislature "unlimited by any provision of this Constitution" necessarily precludes countermanding or limiting the Legislature's authority through the use of the initiative power contained in article II, section 10, which had been in the Constitution since 1911. Given that this Court has questioned whether an initiative

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[13] *Accord Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1037 ("The jurisdictional provisions of article VI of the California Constitution are, therefore, inapplicable to the extent that the Legislature has exercised the powers granted it under section 4 of article XIV.").

[14] In *County of Los Angeles*, *supra*, a constitutional amendment (art. XIII B, § 6) required the state to provide state funds whenever a newly enacted statute increased the cost of local programs. This Court recognized that, if interpreted to apply to statutes that increase worker's compensation benefits, the new constitutional amendment would conflict with article XIV, section 4, which grants the Legislature plenary and otherwise unlimited authority over worker's compensation. (*Id.* at p. 57.) The Court avoided the need to resolve the conflict by construing the constitutional amendment not to apply to general changes to the worker's compensation system that increase costs for private and public employers alike. (*Id.* at p. 62.)

constitutional amendment can limit the Legislature's plenary power under article XIV, section 4,[15] an initiative *statute* that attempts that task must necessarily fail.

Even if the reference to the Legislature's plenary authority in article XIV, section 4 could be read to include the initiative process, moreover, Proposition 22 could not survive the test this Court has said applies in the event of a similar conflict between the plenary authority granted to the Legislature by another constitutional provision and the use of the initiative process. In *Independent Energy Producers Association v. McPherson*, *supra*, 38 Cal.4th at pp. 1043-1044, this Court held that identical language in article XII, section 5, which gave the Legislature plenary power to *expand* the Public Utilities Commission's jurisdiction, also permitted a statutory initiative to do the same. In that case, the Court of Appeal had removed an initiative from the ballot on the ground that reference to the Legislature's plenary power to confer additional authority on the PUC under article XII, section 5 prohibited an initiative that would have expanded the PUC's jurisdiction over the electricity market. The Court of Appeal's decision, joined by then-Justice Cantil-Sakauye (*see* 131 Cal.App.4th 298), would not have allowed the use of the initiative power even if it did not conflict with any previous exercise of the Legislature's authority. This Court granted review and reversed the Court of Appeal, stating that article XII, section 5 does not preclude use of the initiative process to confer *additional* powers or authority upon the PUC. (*Id.*)

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[15] *County of Los Angeles, supra*, 43 Cal.3d at p. 57, fn. 9.

In a footnote, however, the Court made clear the limits of its holding: "To avoid any potential misunderstanding, we emphasize that our holding is limited to a determination that the provisions of article XII, section 5 do not preclude the use of the initiative process to enact statutes conferring additional authority upon the PUC." (*Id.* at p. 1044, fn. 9.) The Court further explained: "We have no occasion in this case to consider whether an initiative measure relating to the PUC may be challenged on the ground that it improperly *limits* the PUC's authority or improperly conflicts with the Legislature's exercise of *its* authority to expand the PUC's jurisdiction or authority. Should these or other issues arise in the future, they may be resolved through application of the relevant constitutional provision or provisions to the terms of the specific legislation at issue." (*Id.*, emphasis in original.)

This case presents the issue that the Court, contemplated might "arise in the future." Proposition 22 classifies app-based drivers as independent contractors who are outside the worker's compensation system, thereby countermanding the Legislature's decision to include them within the worker's compensation system and limiting the Legislature's future authority to provide a complete system of worker's compensation for these workers, which by definition includes occupational safety and health protections. Proposition 22 thus would countermand and permanently limit the explicit constitutional authority of the Legislature to protect the drivers' safety and to "create and enforce a liability on the part of any or

all persons to compensate any or all of their workers" for injury or disability, which the Legislature did by adopting AB 5. And that goes beyond the proper purview of an initiative statute.

In this regard, it is important to be clear that, unlike the initiative in *Independent Energy Producers Association. v. McPherson,* this case does not merely involve the exercise by the voters – rather than by the Legislature – of unexercised legislative authority granted by a provision of the state Constitution. Proposition 22 does not in any sense adopt its own "complete system of worker's compensation" for app-based drivers. Rather, it expressly makes those drivers ineligible to participate in the complete system established by the Legislature while substituting provisions that shift most of the costs to the workers themselves.

The contrast between the complete workers' compensation system provided in the Labor Code and the benefits provided in the measure is stark. Proposition 22 merely requires companies that contract with app-based drivers to maintain "occupational accident insurance" of at least $1 million. (New § 7455(a).) Unlike California's workers' compensation system, Proposition 22 provides no money for vocational training if an injury prevents a worker from returning to work as a driver. (Lab. Code, § 4658.5.) Unlike California's workers' compensation system, Proposition 22 contains no provision to compensate workers for permanent disability. (Lab. Code, §§ 4650(b), 4658.) Proposition 22 also makes no provision for an administrative body "to determine any dispute or matter arising under such

legislation" so as to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character . . . ." (Cal. Const., art. XIV, § 4; *cf.* Lab. Code § 110 et seq.)

Nor does Proposition 22, by contrast to the California Occupational Safety and Health Act (Lab. Code, § 6300 et seq.) make "full provision for securing safety in places of employment." (Cal. Const., art. XIV, § 4.) Although the Constitution provides that occupational safety protections are part of a "complete system' of workers' compensation" (*id.*), Proposition 22 makes virtually no provision for such protections.

It also bears emphasis that article XIV, section 4's grant of plenary authority to the Legislature extends to "any and all workers" and that any doubts about whether the app-based drivers covered by Proposition 22 are included within the existing worker's compensation and occupational health and safety systems were resolved when the Legislature codified this Court's *Dynamex* decision in Labor Code section 2775.[16]

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[16] Even before *Dynamex,* this Court had recognized that the statutory definition of an employee for purposes of workers' compensation coverage must be construed broadly and "resolved by reference to the history and fundamental purposes underlying the [Workers'] Compensation Act." (*Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771, 777; *see also Pac. Employers Ins. Co. v. Industrial Acc. Com.* (1945) 26 Cal.2d 286, 289.) In *Drillon v. Industrial Acc. Com.* (1941) 17 Cal.2d 346, this Court held that a jockey engaged for a single horserace, with the amount of compensation depending on the race results – the quintessential "gig" worker – was an employee for purposes of worker's compensation.

Article XIV, section 4, states that "all of [the] matters" listed in that section as elements of a "complete system of worker's compensation" are "expressly declared to be the social public policy of this State." Proposition 22 would deprive app-based drivers of the complete system of worker's compensation that the Legislature has provided for them and restrict the Legislature from granting them the benefits of such a complete system in the future. Under the test set out in *Independent Energy Producers Association. v. McPherson* to resolve a conflict between an initiative and the Legislature's plenary authority, "application of the relevant constitutional provision . . . to the terms of the specific legislation at issue" leaves no doubt that the worker's compensation protections provided by the Legislature further the constitutional purposes, while Proposition 22's withdrawal of those protections does not. It would therefore be inconsistent with article XIV, section 4 to allow a mere statute, even one approved by the voters, to countermand the Legislature's exercise of its "unlimited" authority to carry out what the Constitution declares to be "the social public policy of this State."

B. Under The Terms Of The Initiative, The Provisions That Violate Article XIV Are Inseverable From The Remainder Of The Measure

New section 7467(a) contains a standard severability clause stating that if any of the measure's provisions are held invalid, the remainder of the provisions shall go into effect. Subsection 7467(b) contains an important qualifier, however, to that provision:

> (b) Notwithstanding subdivision (a) if any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of Section 7451 of Article 2 (commencing with Section 7451), as added by the voters, is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall apply to the entirety of the remaining provisions of this chapter, and no provision of this chapter shall be deemed valid or given force of law.

A holding that Proposition 22 cannot constitutionally deprive the Legislature of its constitutional authority over workers' compensation would invalidate the application of Section 7451 to the workers' compensation system. Section 7451 provides that an app-based driver is "not an employee" for purposes of the Labor Code, including workers' compensation, or for "any orders, regulations or opinions of . . . any board . . . within the Department of Industrial Relations," including the Workers' Compensation Appeals Board. As demonstrated above, however, the conflict between Proposition 22 and the Legislature's plenary authority to establish a complete system of workers' compensation must be resolved in favor of the system enacted by the Legislature. That system employs the ABC test for determining whether a worker is an employee and does not contain the exclusion for hundreds of thousands of app-based drivers that is set out in new section 7451.

Under Proposition 22's severability provision, if any part of section 7451 or any application of it is held invalid, "no provision of this chapter shall be deemed valid or given force of

law." (New § 7467(b).) Because application of section 7451 to app-based drivers for purposes of workers' compensation violates article XIV, section 4, the entire measure is invalid.

Moreover, even without new section 7467(b), the conflict between new section 7451 and article XIV, section 4 would make the entire initiative invalid under traditional severability analysis. (*See Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 822 [invalid provisions of initiative must be grammatically, functionally, and volitionally severable from remainder].)

The workers' compensation provisions of the Labor Code and the orders, regulations, and opinions regarding them are neither grammatically, functionally, nor volitionally severable from the language of new section 7451. The entire purpose of the initiative is to make app-based drivers independent contractors rather than employees and to substitute accident insurance for workers' compensation benefits. (*See, e.g.*, new § 7455(a).) And even if it were grammatically possible to insert a workers' compensation exception, that would interfere functionally with the language making the drivers independent contractors, and render the accident insurance requirement surplusage.

III.

BY DEFINING SPECIFIC AREAS OF LEGISLATION AS "AMENDMENTS," PROPOSITION 22 USURPS THE JUDICIARY'S INHERENT AUTHORITY TO INTERPRET THE CONSTITUTION

Article IV, section 1 of the state Constitution vests all legislative power in the Legislature, subject to the people's rights of initiative and referendum. One exception to the Legislature's broad authority is found in article II, section 10(c), which prohibits the Legislature from amending an initiative statute unless the initiative "permits amendment or repeal without the electors' approval." (Cal. Const., art. II, § 10(c).) Over the years, it has been the duty of the courts to decide whether particular legislation is a permissible exercise of the Legislature's broad authority or is prohibited (without voter approval) because it constitutes an amendment of a prior initiative in contravention of article II, section 10(c).

In *People v. Kelly* (2010) 47 Cal.4th 1008, this Court affirmed that the Legislature is free to enact laws addressing the general subject matter of an initiative, or a "related but distinct area" of law that an initiative measure "*does not specifically authorize or prohibit*." (*Id.* at p. 1025, emphasis added, citing *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 830 [requirement for counties to provide identification cards for medical cannabis patients did not affect terms of Compassionate Use Initiative and was not impermissible] and *People v. Cooper* (2002) 27 Cal.4th 38, 47 [legislative limitation on pre-sentence conduct credits did not

amend Briggs Initiative)].) In resolving questions under article II, section 10(c), the courts ask whether the new legislation "prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People v. Superior Court* (2010) 48 Cal.4th 564, 571.)

As described above, paragraph (3) of subdivision (c) of section 7465 designates as an amendment (and therefore restricts) any legislation that distinguishes among drivers based on their classification. This provision is designed to prevent legislation that makes any regulatory distinction between drivers classified as "independent contractors" and those classified as "employees," including any legislation that provides incentives to companies that treat drivers as employees or incentives to improve the conditions of app-based drivers classified as independent contractors. However, no substantive provision of Proposition 22 addresses this subject.

Similarly, paragraph (4) of subdivision (c) of section 7465 designates as an amendment (and therefore restricts) any legislation authorizing any entity or organization to represent the interests of app-based drivers in connection with their relationship to the gig companies or with respect to their compensation, benefits, or working conditions. Thus, the Legislature would be restricted from establishing any type of collective bargaining system for app-based drivers or authorizing any entity or organization to represent them in enforcing the guarantees of Proposition 22 or advocating for improvements. Again, no substantive provision of Proposition 22 addresses or

restricts collective bargaining or systems for enforcement and advocacy, directly or indirectly. In fact, since the wage and benefits provisions in the initiative are stated to be minimums, some form of collective bargaining would seem to be the natural mechanism for improving those terms.[17]

Likewise, just as the Labor Commissioner is authorized to represent the interests of employees in enforcing the Labor Code, it would be natural for the Legislature to authorize some entity or organization to represent the interests of the drivers in enforcing Proposition 22. (*See*, *e.g.*, Lab. Code, § 98.4 ["The Labor Commissioner may, upon the request of a claimant financially unable to afford counsel, represent such claimant in the de novo proceedings provided for in Section 98.2"].) The amendment provision of section 7465(c), however, arguably could prohibit the Legislature from affording drivers similar representation in dealing with their companies.

Under this Court's precedents interpreting article II, section 10(c), neither of the types of legislation identified in paragraphs (3) and (4) of subdivision (c) of section 7465 would be considered "amendments" of Proposition 22, because neither "prohibits what the initiative authorizes, or authorizes what the initiative prohibits." (*People v. Superior Court*, *supra*, 48 Cal.4th at p. 571.) To the extent that the purpose of California's

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[17] Federal labor and antitrust laws would not prevent the California Legislature from creating a collective bargaining system for app-based drivers at the state level, with supervision by state officials. (*Cf. Chamber of Commerce of the United States of Am. v. City of Seattle* (9th Cir. 2018) 890 F.3d 769, 779-795.)

limitation on amendments to initiatives is to "protect the people's initiative powers by precluding the Legislature from *undoing what the people have done*" (*People v. Kelly*, *supra*, 47 Cal.4th at p. 1025), it has no applicability here, because Proposition 22 does not substantively address either of these areas.

Proposition 22 nevertheless would preclude the courts from examining whether particular legislation is an amendment by providing in advance, in the initiative itself, that legislation addressing certain subjects constitutes an amendment even though it might not otherwise qualify as an amendment under the courts' jurisprudence. The result would be to impose a particular legislative construction of article II, section 10(c) on the courts, i.e., the measure would allow initiative proponents rather than the courts to define what constitutes an amendment.

The state Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) The purpose of section 3 is to keep any one branch or individual from gaining too much power. (*Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 297.) "[N]one of the coordinate branches of our tripartite government may exercise power vested in another branch." (*Estate of Cirone* (1987) 189 Cal.App.3d 1280, 1286.)

New section 7465 represents legislation (adopted by initiative) that would override this Court's constitutional jurisprudence to dictate a particular interpretation of article II,

section 10(c) for Proposition 22 only. From a separation of powers perspective, new section 7465 is no different than if the Legislature were to amend an initiative, while including language stating that the legislation does not constitute an amendment. Both infringe on the core function of the courts "to say what the law is." (*Marbury v. Madison* (1803) 5 U.S. 137, 177.)

Legislative findings may be given varying degrees of deference, although the courts retain the ultimate authority to enforce constitutional mandates. (*See Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252.) And the courts have rejected many legislative attempts to define constitutional terms. In *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 565, the Court emphasized that "the resolution of constitutional challenges to state laws falls within the *judicial* power, not the *legislative* power;" saying that "'[i]t is, emphatically, the province and duty of the judicial department, to say what the law is.'" (Emphasis in original.)

In the case of initiative measures, this Court should be similarly hesitant to abdicate to initiative proponents' views of what constitutes an amendment under article II, section 10(c). Otherwise, permissible legislation could be significantly restricted (here, requiring approval by seven-eighths of the Legislature) or prohibited outright, without any judicial oversight or recourse. If accepted, the amendment provisions in Proposition 22 offer a roadmap for future abuse, allowing initiative proponents to decline to address controversial or

unpopular topics while at the same time broadly defining – and prohibiting – future legislation on those topics as impermissible "amendments" and outside the scope of review by the courts.

Although both the Legislature and the voters are free to overturn the courts' statutory interpretations when dissatisfied with them, this Court is the final arbiter of the California Constitution's meaning. (*People v. Birks* (1998) 19 Cal.4th 108, 117.) As Justice Werdegar said, "[W]e [the California Supreme Court] are the last word on the meaning of the state Constitution. If we err, our decision can be corrected only by an amendment to that Constitution." (*City of Vista, supra*, 54 Cal.4th at p. 567, Werdegar, J., dissenting.) Here, Proposition 22 directly restricts the courts' authority to interpret article II, section 10(c) by requiring a finding that any legislation in two broad areas is an "amendment" within the meaning of that provision. Just as the Court would not permit the Legislature to override this Court's construction of article II, section 10(c) by statute, it cannot permit Proposition 22's proponents to accomplish that result by use of its broad definition of "amendment."

IV.

PROPOSITION 22 IMPERMISSIBLY RESTRICTS THE LEGISLATURE'S AUTHORITY TO ENACT LEGISLATION NOT ADDRESSED IN THE INITIATIVE

As stated above, article IV, section 1 of the state Constitution vests all legislative power in the state Legislature, except as reserved to the people to act by initiative and referendum. In *Marine Forests Society v. California Coastal*

Commission (2005) 36 Cal.4th 1, 31, this Court described the sweeping scope of the Legislature's power under our state Constitution, saying that "it is well established that the California Legislature possesses plenary legislative authority except as specifically limited by the California Constitution." (*Id.* at p. 31.) At the core of that plenary authority is the power to enact laws. (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 254.) Pursuant to that authority, "[t]he Legislature has the actual power to pass any act it pleases," subject only to those limits that may arise elsewhere in the state or federal Constitutions. (*Nougues v. Douglass* (1857) 7 Cal. 65, 70.)

Given the breadth of the Legislature's authority, this Court has made clear that the Legislature is free to enact laws addressing the general subject matter of an initiative, or a "related but distinct area" of law that an initiative measure "*does not specifically authorize or prohibit*." (*People v. Kelly*, *supra*, 47 Cal.4th at p. 1026, emphasis added.) Because an initiative can preclude future legislative action in a way that regular legislation cannot, an unduly expansive definition of "amendment" in the context of initiatives would result in a corresponding narrowing of the Legislature's authority to enact legislation under article IV, section 1. As *Kelly* suggests, this critical aspect of the initiative process counsels for a narrower construction of amendments rather than a broader one; it certainly does not countenance entrusting the definition of an amendment to the proponents themselves.

A related effect of allowing initiative proponents to define what constitutes an "amendment" to the initiative is that it would allow the initiative's proponents to subject certain legislation to a supermajority requirement not contained in the Constitution. (*See*, *e.g.*, *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484 [Legislature's power to amend initiative subject to conditions attached by the voters].) Allowing proponents of a statutory initiative to define the scope of an amendment would permit them to indirectly restrict the Legislature's constitutional authority to enact legislation using its own procedural rules and to adopt legislation by majority vote. (Cal. Const., art. IV, §§ 7 [each house may set rules for its proceedings]; 8(b)(3) [majority vote required to pass bills].) As this Court said in *Rossi v. Brown*, however, the statutory initiative power "may not be used to control the internal operation of the Legislature." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 696, fn. 2, citing *People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 327.)[18]

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[18] This Court has never squarely considered the argument that a statutory initiative cannot impose a super-majority requirement for amendments because that regulates not the substance (*e.g.*, whether the amendment furthers the initiative's purpose) but the manner in which the Legislature acts. As a general matter, unless the Constitution provides otherwise, a statute adopted by majority vote is equivalent to a statute adopted unanimously. Nevertheless, court decisions assume the constitutionality of super-majority requirements. (*E.g.*, *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 774, 776.) The issue here, however, is not whether an initiative may allow true amendments only by super-majority vote but whether an initiative may require a super-majority for legislation that would

While article IV, section 1 allows legislative authority to be shared by the Legislature and the voters, article II, section 8 defines the initiative as "the power of the electors to *propose statutes* and amendments to the Constitution and to adopt or reject them." (Cal. Const., art. II, § 8 (a).) Proposition 22 does not propose any statutory terms addressing differential administrative or regulatory treatment of companies that classify drivers as employees, nor does it have any terms addressing collective bargaining or enforcement. Proposition 22 therefore does not actually propose any "statute" addressing these issues; it merely proposes to designate these areas of law as "amendments" that are thereby restricted in the future by article II, section 10(c). Put another way, Proposition 22 does not exercise the right to enact legislation by initiative as to these issues; rather, it attempts to restrict the Legislature's broad legislative authority under article IV, section 1 in several areas without affirmatively exercising authority under article II, section 8.

Some examples illustrate this point.

Labor Code section 923, state law since 1937, declares "the public policy of this State" that "the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment," and so " it is necessary that the individual workman have full freedom of

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not otherwise constitute an "amendment" within the meaning of the Constitution.

association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment. . . ."

Section 923 "commits the state, as a matter of public policy, to the principles of collective bargaining." (*Shafer v. Registered Pharmacists Union* (1940) 16 Cal.2d 379, 385.) This Court has said that it adopts "a state policy of complete freedom in regard to the formation of labor organizations to the end there may be collective action by workmen." (*Chavez v. Sargent* (1959) 52 Cal.2d 162, 191, disapproved on other grounds in *Petri Cleaners, Inc. v. Automotive Employees, etc., Local No. 88* (1960) 53 Cal.2d 455, 474-475.) "As nearly as labor may be said to have a governmentally declared Bill of Rights in California, it is that enunciated in section 923." (*Id*. at p. 194.)

Notwithstanding this broad policy favoring collective bargaining, however, paragraph (4) of subdivision (c) of new section 7465 essentially prohibits the Legislature from authorizing a collective bargaining process for app-based drivers, such that the drivers can "exercise actual liberty of contract" in dealing with well-capitalized corporations. Yet no substantive provision of Proposition 22 forbids the creation of such a collective bargaining system, and it is uncertain whether the voters would have adopted a ban on collective bargaining legislation if asked directly to adopt one. The same is true of legislation that authorizes an entity or organization to represent app-based drivers in enforcing Proposition 22, which arguably would be forbidden without a seven-eighths vote.

Paragraph (3) of subdivision (c) of new section 7465 similarly hamstrings the Legislature's ability to enact regulatory or administrative provisions that distinguish among drivers based on their classification, including legislation that potentially provides incentives to companies that treat drivers as employees or to improve their terms and conditions of work. Yet no provision of the initiative substantively addresses this subject. Again, the voters may not have adopted such a prohibition had they been asked directly to do so.

The Legislature often chooses to use various regulatory tools to further a particular policy without imposing mandates. Tax credits or other financial incentives are one example. Use of the government's purchasing power is another, such as through the inclusion of prevailing wage requirements in government contracts. Yet Proposition 22 would preclude such legislation even where the legislation does not mandate that app-based companies classify drivers as employees.

In sum, Proposition 22 not only defines certain workers as independent contractors but impermissibly seeks to prevent the Legislature from providing future protections for these workers in ways that are not inconsistent with the substantive provisions of Proposition 22. Proposition 22 would accomplish this deceptively by using an expansive definition of what constitutes an "amendment," and thereby contracting the authority of the Legislature. Although article II, section 10(c) of the state Constitution allows an initiative to limit the Legislature's power to amend an initiative statute, the

Constitution does not allow initiative proponents to go further by defining what constitutes an "amendment" to include matters not substantively addressed by the initiative. If entire areas of future legislation could be prohibited simply by use of an expansive amendment provision, initiative proponents would be able to significantly restrict the Legislature's authority to enact future legislation without disclosing that goal through a substantive proposal that obtains voter approval. As such, the expansive definition of "amendment" cannot be permitted to stand.

V.

PROPOSITION 22 VIOLATES THE SINGLE-SUBJECT RULE

Proposition 22's failure to inform the public about what it is actually enacting also violates article II, section 8(d) of the California Constitution, which states that "an initiative measure embracing more than one subject may not be submitted to the electors or have any effect." The purpose of the single-subject rule is to avoid confusion of either petition signers or voters by protecting against "multifaceted measures of undue scope." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253.)

In order to avoid a single-subject violation, all of the provisions of a proposed measure must be reasonably germane to one another and to the general purpose or object of the initiative. (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 575.) Each provision of a measure does not need to interlock in a functional relationship, but *all of the provisions must reasonably relate to a*

common theme or purpose. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 512-513.) Put another way, the provisions must "fairly disclose a reasonable and common sense relationship among their various components *in furtherance of a common purpose*." (*Id.* at p. 512, emphasis added.)

Although this is admittedly not the typical "single subject" case, the amendment provision of Proposition 22 is a classic example of combining unrelated provisions in a way designed to intentionally deceive voters. Proposition 22 was presented as a measure specifically to benefit app-based drivers by allowing them to be classified as independent contractors rather than employees. Its Statement of Purpose reads as follows:

> Statement of Purpose. The purposes of this chapter are as follows:
>
> (a) To protect the basic legal right of Californians to choose to work as independent contractors with rideshare and delivery network companies throughout the state.
>
> (b) To protect the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours for when, where, and how they work.
>
> (c) 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, health care subsidies for qualifying drivers, protection against harassment and discrimination, and mandatory contractual rights and appeal processes.
>
> (d) To improve public safety by requiring criminal background checks, driver safety training, and other safety provisions to help ensure app-based rideshare and delivery drivers do not pose a threat to customers or the public.
>
> (Pet. RJN, Exh. A at p. 1; new § 7450.)

There is not a word in the Statement of Purpose about collective bargaining; nor is there any way in which the four purposes set out above are either inconsistent with or related to collective representation of or bargaining for app-based drivers. Those purposes and the provisions that implement them set minimum requirements; they do not prohibit drivers from organizing to ask companies like Uber and Lyft for more.

Nevertheless, Proposition 22's amendment provision would restrict the Legislature's ability to create a representation/enforcement system or collective bargaining system for this class of workers, contrary to the express policy in Labor Code section 923 that favors collective bargaining. No substantive provisions put the voters on notice of these restrictions. They are not mentioned anywhere in the ballot title and summary, the analysis, or the ballot arguments regarding

the measure.[19] Those few voters who actually read to the end of the measure are unlikely to understand what the technical terms of the amendment provision actually mean or the consequences of defining certain legislation as an amendment. In short, the voters will have absolutely no understanding that a "yes" vote is a vote to severely limit the Legislature's authority to authorize collective bargaining for app-based drivers.

In cases like this, where the courts detect intentional efforts to confuse or mislead voters, they have invoked the single-subject rule even when there is arguably a general enough subject to cover the measure at issue. That was the case in *California Trial Lawyers Association v. Eu* (1988) 200 Cal.App.3d 351, 359-360 ("*CTLA*"), where the Court of Appeal held that a lengthy initiative designed to control the cost of insurance violated the single-subject rule because, buried in its text, it contained a provision that would have protected the insurance industry from future campaign contribution regulations targeting insurers. The Court of Appeal held that although all of the provisions had to do with the insurance industry, the real subject of the initiative was controlling insurance costs, which was unrelated to the campaign finance provision buried at page 50 of the 120-page initiative. (*Id.* at pp. 356, 360.)

The similarities between this case and Proposition 22 are clear: special interests draft an initiative that they believe will appeal to voters and then slip in an unrelated provision that

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[19] *See* Pet. RJN, Exh. C.

they hope will pass along with it. In Proposition 22, the provision is slipped into the amendment section at the end of the measure, which most people fail either to read or to understand.

Although the substantive terms of Proposition 22 and the amendment terms technically all deal with app-based drivers, as in *CTLA*, the stated purposes of Proposition 22 have nothing to do with collective bargaining. Similarly, just as in *CTLA,* the ballot materials gave voters no hint that by voting "yes" on the measure, they would effectively prohibit app-based drivers from organizing to bargain collectively. As the *CTLA* court said:

> The significant threat that voters will be misled as to the breadth of the initiative is heightened by the absence of any reference to section 8 in the Attorney General's title and summary, or in the introductory statement of findings and purpose in the initiative itself, set forth in full above. In the present case, not only is there a lack of any reasonably discernible nexus between the stated object of the initiative and the campaign spending and conflict of interest provisions of section 8, but the title and various descriptions of the initiative's contents give no clue that any such provisions are buried within. These flaws are fatal.
>
> (*Id.* at p. 361.)

One has to ask whether the result of the initiative might have been different if voters had explicitly been told they were voting to prohibit future collective bargaining for app-based drivers. Proposition 22 is, in the *CTLA* court's words, "a

paradigm of the potentially deceptive combinations of unrelated provisions at which the constitutional limitation on the scope of initiative is aimed." (*Id*. at p. 360.)

Under article II, section 8, subdivision (d), "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Although Proposition 22 has already been submitted to the voters, the entire initiative is invalid and may not "have any effect."

CONCLUSION

For the foregoing reasons, the Court should exercise its original jurisdiction over this case and the Court should hold that Proposition 22 is invalid in toto. Alternatively, the Court should strike the unconstitutional provisions from Proposition 22 and grant such relief as is just and proper.

Dated: January 12, 2021

Respectfully submitted,

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SERVICE EMPLOYEES INTERNATIONAL UNION

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BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 13,904 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: January 12, 2021

/s/ Robin B. Johansen

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On January 12, 2021, I served a true copy of the following document(s):

EMERGENCY PETITION FOR WRIT OF MANDATE AND REQUEST FOR EXPEDITED REVIEW

on the following party(ies) in said action:

Xavier Becerra
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☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

- ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.

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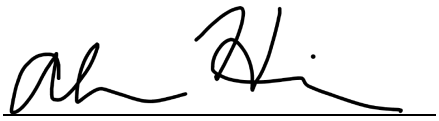
I declare, under penalty of perjury, that the foregoing is true and correct. Executed on January 12, 2021, in Piedmont, California.



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