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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MISCELLANEOUS:

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

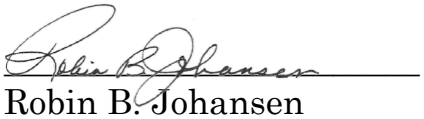
Attorneys for Petitioners
Hector Castellanos, Joseph Delgado, Saori Okawa, Michael Robinson, Service Employees International Union California State Council, and Service Employees International Union

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,

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

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
Attorney General of California
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814
Phone: (916) 445-9555
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Attorney for Respondents State of California and Labor Commissioner Lilia García-Brower

☐ **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.

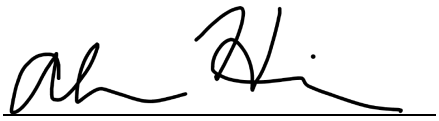
☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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



Alex Harrison

(00428919-9)

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.

REQUEST FOR JUDICIAL NOTICE AND MEMORANDUM OF POINTS AND AUTHORITES; DECLARATION OF BENJAMIN N. GEVERCER; AND [PROPOSED] ORDER

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REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252 and California Evidence Code section 452, petitioners request that the Court take judicial notice of the following documents:

1. The text of Proposition 22 (2020), attached as **Exhibit A** to the Declaration of Benjamin N. Gevercer.

2. Assembly Bill 5 (Stats. 2019, ch. 5), attached as **Exhibit B** to the Declaration of Benjamin N. Gevercer.

3. Proposition 23 (1918), attached as **Exhibit C** to the Declaration of Benjamin N. Gevercer.

4. Proposition 10 (1911), attached as **Exhibit D** to the Declaration of Benjamin N. Gevercer.

These documents are proper subjects for judicial notice and relevant to the Court's inquiry. This request is based on the Declaration of Benjamin N. Gevercer and the Memorandum of Points and Authorities set forth below.

MEMORANDUM OF POINTS AND AUTHORITIES

California Rule of Court 8.252(a) authorizes a party to request judicial notice by a reviewing court under Evidence Code section 459.[1] Section 459 provides that a reviewing court may take judicial notice of any matter specified in section 452. Subdivision (c) of section 452 provides that this Court has discretion to take judicial notice of official acts of the legislative,

[1] Unless otherwise indicated, all further statutory references are to the Evidence Code.

executive, and judicial departments of the United States and of any state of the United States. Subdivision (h) of section 452 provides that judicial notice may be taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Under section 453, the Court "shall" take judicial notice of any matter specified in section 452 where notice of the request is provided to the adverse party and where the court is provided sufficient information to verify the matters subject to the request.

Exhibit A is a true and correct copy of the ballot materials for Proposition 22 (2020), as included in the November 3, 2020 General Election Ballot Pamphlet that the Secretary of State assembled and published. **Exhibit A** is relevant because it contains the text and accompanying ballot materials for the measure challenged in this action.

Exhibit B is an official act of the California State Legislature and is a proper subject of judicial notice under Evidence Code sections 452(c), which provides that judicial notice may be taken of official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States. **Exhibit B** is relevant to show that when it enacted AB 5, the California Legislature made clear its intent to make the test from *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 applicable to the determination of whether a worker is an employee or an

independent contractor for purposes of the worker protection statutes in the Labor Code.

Exhibit C is a true and correct copy of Proposition 23 (1918) and accompanying ballot materials, which appeared on the November 5, 1918 General Election ballot. This Court has noted that as of 1911, "the election statutes provided for the preparation and mailing to the voters, prior to an election, of a document similar to the current ballot pamphlet . . . ." (*Independent Energy Producers, Inc. v. McPherson* (2006) 38 Cal.4th 1020, 1037.) These early ballot pamphlets are available at the University of California, Hastings College of the Law Scholarship Repository and can be accessed at: https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1124&context=ca_ballot_props. The voter pamphlet database is a publication of a constitutional agency of the California government and contains facts that are "not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Exhibit C is relevant to show that the voters amended then article XX, section 21 of the Constitution 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."

Exhibit D is a true and correct copy of Proposition 10 (1911), which appeared on the October 10, 1911 Special Election ballot. Like Exhibit C, Exhibit D is available at the University of California, Hastings College of the Law Scholarship Repository and can be accessed at: https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1023&context=ca_ballot_props. **Exhibit D** is relevant to show the first workers' compensation provisions of the California Constitution, as adopted by voters in 1911.

California Rule of Court 8.252(a)(2)(C-D) requires this motion to state whether judicial notice of the matter was taken by a trial court and whether the matter to be noticed relates to proceedings occurring after an order or judgment that is the subject of an appeal. **Exhibits A**, **B**, **C**, and **D** were not presented to a Court of Appeal or trial court because this matter is presented for the first time to this Court under the Court's original jurisdiction.

CONCLUSION

For the reasons set forth above, petitioners request that the Court grant judicial notice of **Exhibits A**, **B**, **C**, and **D**.

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

DECLARATION OF BENJAMIN N. GEVERCER

I, Benjamin N. Gevercer, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of California and am employed by the law firm of Olson Remcho LLP. The facts set forth herein are personally known to me, and if called upon to testify, I could and would competently do so.

2. Attached as **Exhibit A** is text of Proposition 22 (2020). This copy was obtained on December 29, 2020 from the California Secretary of State's website at https://voterguide.sos.ca.gov/propositions/22/.

3. Attached as **Exhibit B** is Assembly Bill 5 (Stats. 2019, ch. 5). This copy was obtained on December 29, 2020 from the California Legislative Information website at leginfo.legislature.ca.gov.

4. Attached as **Exhibit C** is Proposition 23 (1918). This copy was obtained on December 29, 2020 from the UC Hasting's Scholarship Repository website for California Ballot Propositions and Initiatives: https://repository.uchastings.edu/ca_ballot_props/.

5. Attached as **Exhibit D** is Proposition 10 (1911). This copy was obtained on December 29, 2020 from the UC Hasting's Scholarship Repository website for California Ballot Propositions and Initiatives: https://repository.uchastings.edu/ca_ballot_props/.

6. A proposed order is appended hereto.

I declare under penalty of perjury that the foregoing is true and correct. I have firsthand knowledge of the same, except as to those matters described on information and belief, and if called upon to do so, I could and would testify competently thereto. Executed on January 12, 2021, in Sacramento, California.

Benjamin Gevercer

BENJAMIN N. GEVERCER

[PROPOSED] ORDER

GOOD CAUSE APPEARING THEREFORE, pursuant to California Rule of Court 8.252(a) and Evidence Code sections 451, 452, and 453, petitioners' request that the Court take Judicial Notice is hereby GRANTED. This Court takes judicial notice of **Exhibits A**, **B**, **C**, and **D** in petitioners' Request for Judicial Notice.

DATED: _____

_____
CHIEF JUSTICE OF THE
CALIFORNIA SUPREME COURT

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):

REQUEST FOR JUDICIAL NOTICE AND MEMORANDUM OF POINTS AND AUTHORITES; DECLARATION OF BENJAMIN N. GEVERCER; AND [PROPOSED] ORDER

on the following party(ies) in said action:

Xavier Becerra Attorney General of California Office of the Attorney General 1300 "I" Street Sacramento, CA 95814 Phone: (916) 445-9555 Email: AGelectronicservice@doj.ca.gov	*Attorney for Respondents State of California and Labor Commissioner Lilia García-Brower*

☐ **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.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Alex Harrison

(00428920-2)

EXHIBIT A

statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this act. If this act receives a greater number of affirmative votes than another measure deemed to be in conflict with it, the provisions of this act shall prevail in their entirety, and the other measure or measures shall be null and void.

PROPOSITION 22

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Business and Professions Code and amends a section of the Revenue and Taxation Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 10.5 (commencing with Section 7448) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 10.5. APP-BASED DRIVERS AND SERVICES

Article 1. Title, Findings and Declarations, and Statement of Purpose

7448. Title. This chapter shall be known, and may be cited, as the Protect App-Based Drivers and Services Act.

7449. Findings and Declarations. The people of the State of California find and declare as follows:

(a) Hundreds of thousands of Californians are choosing to work as independent contractors in the modern economy using app-based rideshare and delivery platforms to transport passengers and deliver food, groceries, and other goods as a means of earning income while maintaining the flexibility to decide when, where, and how they work.

(b) These app-based rideshare and delivery drivers include parents who want to work flexible schedules while children are in school; students who want to earn money in between classes; retirees who rideshare or deliver a few hours a week to supplement fixed incomes and for social interaction; military spouses and partners who frequently relocate; and families struggling with California's high cost of living that need to earn extra income.

(c) Millions of California consumers and businesses, and our state's economy as a whole, also benefit from the services of people who work as independent contractors using app-based rideshare and delivery platforms. App-based rideshare and delivery drivers are providing convenient and affordable transportation for the public, reducing impaired and drunk driving, improving mobility for seniors and individuals with disabilities, providing new transportation options for families who cannot afford a vehicle, and providing new affordable and convenient delivery options for grocery stores, restaurants, retailers, and other local businesses and their patrons.

(d) However, recent legislation has threatened to take away the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours, taking away their ability to make their own decisions about the jobs they take and the hours they work.

(e) Protecting the ability of Californians to work as independent contractors throughout the state using app-based rideshare and delivery platforms is necessary so people can continue to choose which jobs they take, to work as often or as little as they like, and to work with multiple platforms or companies, all the while preserving access to app-based rideshare and delivery services that are beneficial to consumers, small businesses, and the California economy.

(f) App-based rideshare and delivery drivers deserve economic security. This chapter is necessary to protect their freedom to work independently, while also providing these workers new benefits and protections not available under current law. These benefits and protections include a healthcare subsidy consistent with the average contributions required under the Affordable Care Act (ACA); a new minimum earnings guarantee tied to 120 percent of minimum wage with no maximum; compensation for vehicle expenses; occupational accident insurance to cover on-the-job injuries; and protection against discrimination and sexual harassment.

(g) California law and rideshare and delivery network companies should protect the safety of both drivers and consumers without affecting the right of app-based rideshare and delivery drivers to work as independent contractors. Such protections should, at a minimum, include criminal background checks of drivers; zero tolerance policies for drug- and alcohol-related offenses; and driver safety training.

7450. 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.

Article 2. App-Based Driver Independence

7451. Protecting Independence. Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, and any orders, regulations, or opinions of the Department of Industrial Relations or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company if the following conditions are met:

(a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.

(b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.

(c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.

(d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.

7452. Contract and Termination Provisions. (a) A network company and an app-based driver shall enter into a written agreement prior to the driver receiving access to the network company's online-enabled application or platform.

(b) A network company shall not terminate a contract with an app-based driver unless based upon a ground specified in the contract.

(c) Network companies shall provide an appeals process for app-based drivers whose contracts are terminated by the network company.

7452.5. Independence Unaffected. Nothing in Article 3 (commencing with Section 7453) to Article 11 (commencing with Section 7467), inclusive, of this chapter shall be interpreted to in any way alter the relationship between a network company and an app-based driver for whom the conditions set forth in Section 7451 are satisfied.

Article 3. Compensation

7453. Earnings Guarantee. (a) A network company shall ensure that for each earnings period, an app-based driver is compensated at not less than the net earnings floor as set forth in this section. The net earnings floor establishes a guaranteed minimum level of compensation for app-based drivers that cannot be reduced. In no way does the net earnings floor prohibit app-based drivers from earning a higher level of compensation.

(b) For each earnings period, a network company shall compare an app-based driver's net earnings against the net earnings floor for that app-based driver during the earnings period. In the event that the app-based driver's net earnings in the earnings period are less than the net earnings floor for that earnings period, the network company shall include an additional sum accounting for the difference in the app-based driver's earnings no later than during the next earnings period.

(c) No network company or agent shall take, receive, or retain any gratuity or a part thereof that is paid, given to, or left for an app-based driver by a customer or deduct any amount from the earnings due to an app-based driver for a ride or delivery on account of a gratuity paid in connection with the ride or delivery. A network company that permits customers to pay gratuities by credit card shall pay the app-based driver the full amount of the gratuity that the customer indicated on the credit card receipt, without any deductions for any credit card payment processing fees or costs that may be charged to the network company by the credit card company.

(d) For purposes of this chapter, the following definitions apply:

(1) "Applicable minimum wage" means the state mandated minimum wage for all industries or, if a passenger or item is picked up within the boundaries of a local government that has a higher minimum wage that is generally applicable to all industries, the local minimum wage of that local government. The applicable minimum wage shall be determined at the location where a passenger or item is picked up and shall apply for all engaged time spent completing that rideshare request or delivery request.

(2) "Earnings period" means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

(3) "Net earnings" means all earnings received by an app-based driver in an earnings period, provided that the amount conforms to both of the following standards:

(A) The amount does not include gratuities, tolls, cleaning fees, airport fees, or other customer pass-throughs.

(B) The amount may include incentives or other bonuses.

(4) "Net earnings floor" means, for any earnings period, a total amount that is comprised of:

(A) For all engaged time, the sum of 120 percent of the applicable minimum wage for that engaged time.

(B) (i) The per-mile compensation for vehicle expenses set forth in this subparagraph multiplied by the total number of engaged miles.

(ii) After the effective date of this chapter and for the 2021 calendar year, the per-mile compensation for vehicle expenses shall be thirty cents ($0.30) per engaged mile. For calendar years after 2021, the amount per engaged mile shall be adjusted pursuant to clause (iii).

(iii) For calendar years following 2021, the per-mile compensation for vehicle expenses described in clause (ii) shall be adjusted annually to reflect any increase in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics. The Treasurer's Office shall calculate and publish the adjustments required by this subparagraph.

(e) Nothing in this section shall be interpreted to require a network company to provide a particular amount of compensation to an app-based driver for any given rideshare or delivery request, as long as the app-based driver's net earnings for each earnings period equals or exceeds that app-based driver's net earnings floor for that earnings period as set forth in subdivision (b). For clarity, the net earnings floor in this section may be calculated on an average basis over the course of each earnings period.

Article 4. Benefits

7454. Healthcare Subsidy. (a) Consistent with the average contributions required under the Affordable Care Act (ACA), a network company shall provide a quarterly health care subsidy to qualifying app-based drivers as set forth in this section. An app-based driver that averages the following amounts of engaged time per week on a network company's platform during a calendar quarter shall receive the following subsidies from that network company:

(1) For an average of 25 hours or more per week of engaged time in the calendar quarter, a payment greater than or equal to 100 percent of the average ACA contribution for the applicable average monthly Covered California premium for each month in the quarter.

(2) For an average of at least 15 but less than 25 hours per week of engaged time in the calendar quarter, a payment greater than or equal to 50 percent of the average ACA contribution for the applicable average monthly Covered California premium for each month in the quarter.

(b) At the end of each earnings period, a network company shall provide to each app-based driver the following information:

(1) The number of hours of engaged time the app-based driver accrued on the network company's online-enabled application or platform during that earnings period.

(2) The number of hours of engaged time the app-based driver has accrued on the network company's online-enabled application or platform during the current calendar quarter up to that point.

(c) Covered California may adopt or amend regulations as it deems appropriate to permit app-based drivers receiving subsidies pursuant to this section to enroll in health plans through Covered California.

(d) (1) As a condition of providing the health care subsidy set forth in subdivision (a), a network company may require an app-based driver to submit proof of current enrollment in a qualifying health plan. Proof of current enrollment may include, but is not limited to, health insurance membership or identification cards, evidence of coverage and disclosure forms from the health plan, or claim forms and other documents necessary to submit claims.

(2) An app-based driver shall have not less than 15 calendar days from the end of the calendar quarter to provide proof of enrollment as set forth in paragraph (1).

(3) A network company shall provide a health care subsidy due for a calendar quarter under subdivision (a) within 15 days of the end of the calendar quarter or within 15 days of the app-based driver's submission of proof of enrollment as set forth in paragraph (1), whichever is later.

(e) For purposes of this section, a calendar quarter refers to the following four periods of time:

(1) January 1 through March 31.

(2) April 1 through June 30.

(3) July 1 through September 30.

(4) October 1 through December 31.

(f) Nothing in this section shall be interpreted to prevent an app-based driver from receiving a health care subsidy from more than one network company for the same calendar quarter.

(g) On or before December 31, 2020, and on or before each September 1 thereafter, Covered California shall publish the average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan.

(h) This section shall become inoperative in the event the United States or the State of California implements a universal health care system or substantially similar system that expands coverage to the recipients of subsidies under this section.

7455. Loss and Liability Protection. No network company shall operate in California for more than 90 days unless the network company carries, provides, or otherwise makes available the following insurance coverage:

(a) For the benefit of app-based drivers, occupational accident insurance to cover medical expenses and lost income resulting from injuries suffered while the app-based driver is online with a network company's online-enabled application or platform. Policies shall at a minimum provide the following:

(1) Coverage for medical expenses incurred, up to at least one million dollars ($1,000,000).

(2) (A) Disability payments equal to 66 percent of the app-based driver's average weekly earnings from all network companies as of the date of injury, with minimum and maximum weekly payment rates to be determined in accordance with subdivision (a) of Section 4453 of the Labor Code for up to the first 104 weeks following the injury.

(B) "Average weekly earnings" means the app-based driver's total earnings from all network companies during the 28 days prior to the covered accident divided by four.

(b) For the benefit of spouses, children, or other dependents of app-based drivers, accidental death insurance for injuries suffered by an app-based driver while the app-based driver is online with the network company's online-enabled application or platform that result in death. For purposes of this subdivision, burial expenses and death benefits shall be determined in accordance with Section 4701 and Section 4702 of the Labor Code.

(c) For the purposes of this section, "online" means the time when an app-based driver is utilizing a network company's online-enabled application or platform and can receive requests for rideshare services or delivery services from the network company, or during engaged time.

(d) Occupational accident insurance or accidental death insurance under subdivisions (a) and (b) shall not be required to cover an accident that occurs while online but outside of engaged time where the injured app-based driver is in engaged time on one or more other network company platforms or where the app-based driver is engaged in personal activities. If an accident is covered by occupational accident insurance or accidental death insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to contribution for the pro-rata share of coverage attributable to one or more other network companies up to the coverages and limits in subdivisions (a) and (b).

(e) Any benefits provided to an app-based driver under subdivision (a) or (b) of this section shall be considered amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under Article 2 (commencing with Section 11580) of Chapter 1 of Part 3 of Division 2 of the Insurance Code.

(f) (1) For the benefit of the public, a DNC as defined in Section 7463 shall maintain automobile liability insurance of at least one million dollars ($1,000,000) per occurrence to compensate third parties for injuries or losses proximately caused by the operation of an automobile by an app-based driver during engaged time in instances where the automobile is not otherwise covered by a policy that complies with subdivision (b) of Section 11580.1 of the Insurance Code.

(2) For the benefit of the public, a TNC as defined in Section 7463 shall maintain liability insurance policies as required by Article 7 (commencing with Section 5430) of Chapter 8 of Division 2 of the Public Utilities Code.

(3) For the benefit of the public, a TCP as defined in Section 7463 shall maintain liability insurance policies as required by Article 4 (commencing with Section 5391) of Chapter 8 of Division 2 of the Public Utilities Code.

Article 5. Antidiscrimination and Public Safety

7456. Antidiscrimination. (a) It is an unlawful practice, unless based upon a bona fide occupational qualification or public or app-based driver safety need, for a network company to refuse to contract with, terminate the contract of, or deactivate from the network company's online-enabled application or platform, any app-based driver or prospective app-based driver based upon race, color, ancestry, national origin, religion, creed, age, physical or mental disability, sex, gender, sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or veteran status.

(b) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

7457. Sexual Harassment Prevention. (a) A network company shall develop a sexual harassment policy intended to protect app-based drivers and members of the public using rideshare services or delivery services. The policy shall be available on the network company's internet website. The policy shall, at a minimum, do all of the following:

(1) Identify behaviors that may constitute sexual harassment, including the following: unwanted sexual advances; leering, gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters; derogatory comments, epithets, slurs, or jokes;

graphic comments, sexually degrading words, or suggestive or obscene messages or invitations; and physical touching or assault, as well as impeding or blocking movements.

(2) Indicate that the network company, and in many instances the law, prohibits app-based drivers and customers utilizing rideshare services or delivery services from committing prohibited harassment.

(3) Establish a process for app-based drivers, customers, and rideshare passengers to submit complaints that ensures confidentiality to the extent possible; an impartial and timely investigation; and remedial actions and resolutions based on the information collected during the investigation process.

(4) Provide an opportunity for app-based drivers and customers utilizing rideshare services or delivery services to submit complaints electronically so complaints can be resolved quickly.

(5) Indicate that when the network company receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation to reach reasonable conclusions based on the information collected.

(6) Make clear that neither app-based drivers nor customers utilizing rideshare services or delivery services shall be retaliated against as a result of making a good faith complaint or participating in an investigation against another app-based driver, customer, or rideshare passenger.

(b) Prior to providing rideshare services or delivery services through a network company's online-enabled application or platform, an app-based driver shall do both of the following:

(1) Review the network company's sexual harassment policy.

(2) Confirm to the network company, for which electronic confirmation shall suffice, that the app-based driver has reviewed the network company's sexual harassment policy.

(c) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

7458. Criminal Background Checks. (a) A network company shall conduct, or have a third party conduct, an initial local and national criminal background check for each app-based driver who uses the network company's online-enabled application or platform to provide rideshare services or delivery services. The background check shall be consistent with the standards contained in subdivision (a) of Section 5445.2 of the Public Utilities Code. Notwithstanding any other provision of law to the contrary, after an app-based driver's consent is obtained by a network company for an initial background check, no additional consent shall be required for the continual monitoring of that app-based driver's criminal history if the network company elects to undertake such continual monitoring.

(b) A network company shall complete the initial criminal background check as required by subdivision (a) prior to permitting an app-based driver to utilize the network company's online-enabled application or platform. The network company shall provide physical or electronic copies or summaries of the initial criminal background check to the app-based driver.

(c) An app-based driver shall not be permitted to utilize a network company's online-enabled application or platform if one of the following applies:

(1) The driver has ever been convicted of any crime listed in subparagraph (B) of paragraph (2) of subdivision (a) of Section 5445.2 of the Public Utilities Code, any serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code, or any hate crime as defined by Section 422.55 of the Penal Code.

(2) The driver has been convicted within the last seven years of any crime listed in paragraph (3) of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(d) (1) The ability of an app-based driver to utilize a network company's online-enabled application or platform may be suspended if the network company learns the driver has been arrested for any crime listed in either of the following:

(A) Subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(B) Subdivision (c) of this section.

(2) The suspension described in paragraph (1) may be lifted upon the disposition of an arrest for any crime listed in subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code that does not result in a conviction. Such disposition includes a finding of factual innocence from any relevant charge, an acquittal at trial, an affidavit indicating the prosecuting attorney with jurisdiction over the alleged offense has declined to file a criminal complaint, or an affidavit indicating all relevant time periods described in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 of the Penal Code have expired.

(e) Nothing in this section shall be interpreted to prevent a network company from imposing additional standards relating to criminal history.

(f) Notwithstanding Section 1786.12 of the Civil Code, an investigative consumer reporting agency may furnish an investigative consumer report to a network company about a person seeking to become an app-based driver, regardless of whether the app-based

driver is to be an employee or an independent contractor of the network company.

7459. Safety Training. (a) A network company shall require an app-based driver to complete the training described in this section prior to allowing the app-based driver to utilize the network company's online-enabled application or platform.

(b) A network company shall provide each app-based driver safety training. The safety training required by this section shall include the following subjects:

(1) Collision avoidance and defensive driving techniques.

(2) Identification of collision-causing elements such as excessive speed, DUI, and distracted driving.

(3) Recognition and reporting of sexual assault and misconduct.

(4) For app-based drivers delivering prepared food or groceries, food safety information relevant to the delivery of food, including temperature control.

(c) The training may, at the discretion of the network company, be provided via online, video, or in-person training.

(d) Notwithstanding subdivision (a), any app-based driver that has entered into a contract with a network company prior to January 1, 2021, to provide rideshare services or delivery services shall have until July 1, 2021, to complete the safety training required by this section, and may continue to provide rideshare services or delivery services through the network company's online-enabled application or platform until that date. On and after July 1, 2021, app-based drivers described in this subdivision must complete the training required by this section in order to continue providing rideshare services and delivery services.

(e) Any safety product, feature, process, policy, standard, or other effort undertaken by a network company, or the provision of equipment by a network company, to further public safety is not an indicia of an employment or agency relationship with an app-based driver.

7460. Zero Tolerance Policies. (a) A network company shall institute a "zero tolerance policy" that mandates prompt suspension of an app-based driver's access to the network company's online-enabled application or platform in any instance in which the network company receives a report through its online-enabled application or platform, or by any other company-approved method, from any person who reasonably suspects the app-based driver is under the influence of drugs or alcohol while providing rideshare services or delivery services.

(b) Upon receiving a report described in subdivision (a), a network company shall promptly suspend the app-based driver from the company's online-enabled application or platform for further investigation.

(c) A network company may suspend access to the network company's online-enabled application or platform for any app-based driver or customer found to be reporting an alleged violation of a zero tolerance policy as described in subdivision (a) where that driver or customer knows the report to be unfounded or based the report on an intent to inappropriately deny a driver access to the online-enabled application or platform.

7460.5. A network company shall make continuously and exclusively available to law enforcement a mechanism to submit requests for information to aid in investigations related to emergency situations, exigent circumstances, and critical incidents.

7461. App-based Driver Rest. An app-based driver shall not be logged in and driving on a network company's online-enabled application or platform for more than a cumulative total of 12 hours in any 24-hour period, unless that driver has already logged off for an uninterrupted period of 6 hours. If an app-based driver has been logged on and driving for more than a cumulative total of 12 hours in any 24-hour period, without logging off for an uninterrupted period of 6 hours, the driver shall be prohibited from logging back into the network company's online-enabled application or platform for an uninterrupted period of at least 6 hours.

7462. Impersonating an App-Based Driver. (a) Any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare or delivery services shall be guilty of a misdemeanor, and is punishable by imprisonment in a county jail for up to six months, or a fine of up to ten thousand dollars ($10,000), or both. Nothing in this subdivision precludes prosecution under any other law.

(b) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission or attempted commission of an offense described in Section 207, 209, 220, 261, 264.1, 286, 287, 288, or 289 of the Penal Code shall be sentenced to an additional term of five years.

(c) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission of a felony or attempted felony and in so doing personally inflicts great bodily injury to another person other than an accomplice shall be sentenced to an additional term of five years.

(d) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the

commission of a felony or attempted felony and in so doing causes the death of another person other than an accomplice shall be sentenced to an additional term of 10 years.

Article 6. Definitions

7463. For purposes of this chapter, the following definitions shall apply:

(a) "App-based driver" means an individual who is a DNC courier, TNC driver, or TCP driver or permit holder; and for whom the conditions set forth in subdivisions (a) to (d), inclusive, of Section 7451 are satisfied.

(b) "Average ACA contribution" means 82 percent of the dollar amount of the average monthly Covered California premium.

(c) "Average monthly Covered California premium" equals the dollar amount published pursuant to subdivision (g) of Section 7454.

(d) "Covered California" means the California Health Benefit Exchange, codified in Title 22 (commencing with Section 100500) of the Government Code.

(e) "Customer" means one or more natural persons or business entities.

(f) "Delivery network company" (DNC) means a business entity that maintains an online-enabled application or platform used to facilitate delivery services within the State of California on an on-demand basis, and maintains a record of the amount of engaged time and engaged miles accumulated by DNC couriers. Deliveries are facilitated on an on-demand basis if DNC couriers are provided with the option to accept or decline each delivery request and the DNC does not require the DNC courier to accept any specific delivery request as a condition of maintaining access to the DNC's online-enabled application or platform.

(g) "Delivery network company courier" (DNC courier) means an individual who provides delivery services through a DNC's online-enabled application or platform.

(h) "Delivery services" means the fulfillment of delivery requests, meaning the pickup from any location of any item or items and the delivery of the items using a passenger vehicle, bicycle, scooter, walking, public transportation, or other similar means of transportation, to a location selected by the customer located within 50 miles of the pickup location. A delivery request may include more than one, but not more than 12, distinct orders placed by different customers. Delivery services may include the selection, collection, or purchase of items by a DNC courier provided that those tasks are done in connection with a delivery that the DNC courier has agreed to deliver. Delivery services do not include deliveries that are subject to Section 26090, as that section read on October 29, 2019.

(i) "Engaged miles" means all miles driven during engaged time in a passenger vehicle that is not owned, leased, or rented by the network company.

(j) (1) "Engaged time" means, subject to the conditions set forth in paragraph (2), the period of time, as recorded in a network company's online-enabled application or platform, from when an app-based driver accepts a rideshare request or delivery request to when the app-based driver completes that rideshare request or delivery request.

(2) (A) Engaged time shall not include the following:

(i) Any time spent performing a rideshare service or delivery service after the request has been cancelled by the customer.

(ii) Any time spent on a rideshare service or delivery service where the app-based driver abandons performance of the service prior to completion.

(B) Network companies may also exclude time if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

(k) "Local government" means a city, county, city and county, charter city, or charter county.

(l) "Network company" means a business entity that is a DNC or a TNC.

(m) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(n) "Qualifying health plan" means a health insurance plan in which the app-based driver is the subscriber, that is not sponsored by an employer, and that is not a Medicare or Medicaid plan.

(o) "Rideshare service" means the transportation of one or more persons.

(p) "Transportation network company" (TNC) has the same meaning as the definition contained in subdivision (c) of Section 5431 of the Public Utilities Code.

(q) "Transportation network company driver" (TNC driver) has the same meaning as the definition of driver contained in subdivision (a) of Section 5431 of the Public Utilities Code.

(r) "Charter-party carrier of passengers" (TCP) shall have the same meaning as the definition contained in Section 5360 of the Public Utilities Code, provided the driver is providing rideshare services using a passenger vehicle through a network company's online-enabled application or platform.

Article 7. Uniform Work Standards

7464. (a) The performance of a single rideshare service or delivery service frequently requires an app-based driver to travel across the jurisdictional boundaries of multiple local governments. California has over 500 cities and counties, which can lead to

overlapping, inconsistent, and contradictory local regulations for cross-jurisdictional services.

(b) In light of the cross-jurisdictional nature of the rideshare services and delivery services, and in addition to the other requirements and standards established by this chapter, the state hereby occupies the field in the following areas:

(1) App-based driver compensation and gratuity, except as provided in Section 7453.

(2) App-based driver scheduling, leave, health care subsidies, and any other work-related stipends, subsidies, or benefits.

(3) App-based driver licensing and insurance requirements.

(4) App-based driver rights with respect to a network company's termination of an app-based driver's contract.

(c) Notwithstanding subdivision (b), nothing in this section shall limit a local government's ability to adopt local ordinances necessary to punish the commission of misdemeanor and felony crimes or to enforce local ordinances and regulations enacted prior to October 29, 2019.

Article 8. Income Reporting

7464.5 (a) A network company that is acting as a third-party settlement organization shall prepare an information return for each participating payee who is an app-based driver with a California address that has a gross amount of reportable payment transactions equal to or greater than six hundred dollars ($600) during a calendar year, irrespective of the number of transactions between the third-party settlement organization and the payee. A third-party settlement organization must report these amounts to the Franchise Tax Board and furnish a copy to the payee, even if it does not have a federal reporting obligation. The information return shall identify the following:

(1) The name, address, and tax identification number of the participating payee.

(2) The gross amount of the reportable payment transactions with respect to the participating payee.

(b) Within 30 days following the date such an information return would be due to the Internal Revenue Service, a network company shall file a copy of any information return required by subdivision (a) with the Franchise Tax Board and shall provide a copy to the participating payee.

(c) A network company may fulfill this requirement by submitting a copy of Internal Revenue Service Form 1099-K or by submitting a form provided by the Franchise Tax Board that includes the same information as that on Cal-1099-K.

(d) For purposes of this section:

(1) "Participating payee" has the same meaning as provided in Section 6050W(d)(1)(A)(ii) of Title 26 of the United States Code.

(2) "Reportable payment transaction" has the same meaning as provided in Section 6050W(c)(1) of Title 26 of the United States Code.

(3) "Third-party settlement organization" has the same meaning as provided in Section 6050W(b)(3) of Title 26 of the United States Code.

(e) This section shall not apply in instances where the gross amount of reportable payment transactions for a participating payee in a calendar year is less than six hundred dollars ($600) or where the participating payee is not an app-based driver.

(f) This section shall apply to reportable payment transactions occurring on or after January 1, 2021.

Article 9. Amendment

7465. (a) After the effective date of this chapter, the Legislature may amend this chapter by a statute passed in each house of the Legislature by rollcall vote entered into the journal, seven-eighths of the membership concurring, provided that the statute is consistent with, and furthers the purpose of, this chapter. No bill seeking to amend this chapter after the effective date of this chapter may be passed or ultimately become a statute unless the bill has been printed and distributed to members, and published on the internet, in its final form, for at least 12 business days prior to its passage in either house of the Legislature.

(b) No statute enacted after October 29, 2019, but prior to the effective date of this chapter, that would constitute an amendment of this chapter, shall be operative after the effective date of this chapter unless the statute was passed in accordance with the requirements of subdivision (a).

(c) (1) The purposes of this chapter are described in Article 1 (commencing with Section 7448).

(2) Any statute that amends Section 7451 does not further the purposes of this chapter.

(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 imposes unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this chapter and must be enacted in compliance with the procedures governing amendments consistent with the purposes of this chapter as set forth in subdivisions (a) and (b).

(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 chapter and must

be enacted in compliance with the procedures governing amendments consistent with the purposes of this chapter as set forth in subdivisions (a) and (b).

(d) Any statute that imposes additional misdemeanor or felony penalties in order to provide greater protection against criminal activity for app-based drivers and individuals using rideshare services or delivery services may be enacted by the Legislature by rollcall vote entered into the journal, a majority of the membership of each house concurring, without complying with subdivisions (a) and (b).

Article 10. Regulations

7466. (a) Emergency regulations may be adopted by Covered California in order to implement and administer subdivisions (c) and (g) of Section 7454.

(b) Any emergency regulation adopted pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted by Covered California may remain in effect for two years from the date of adoption.

Article 11. Severability

7467. (a) Subject to subdivision (b), the provisions of this chapter are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this chapter is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter. The people of the State of California hereby declare that they would have adopted this chapter and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid.

(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.

SEC. 2. Section 17037 of the Revenue and Taxation Code is amended to read:

17037. Provisions in other codes or general law statutes which are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Part 10.2 (commencing with Section 18401), relating to the administration of franchise and income tax laws.

(c) Part 10.5 (commencing with Section 20501), relating to the Property Tax Assistance and Postponement Law.

(d) Part 10.7 (commencing with Section 21001), relating to the Taxpayers' Bill of Rights.

(e) Part 11 (commencing with Section 23001), relating to the Corporation Tax Law.

(f) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

(g) Article 8 (commencing with Section 7464.5) of Chapter 10.5 of Division 3 of the Business and Professions Code.

SEC. 3. Conflicting Measures.

(a) In the event that this initiative measure and another ballot measure or measures dealing, either directly or indirectly, with the worker classification, compensation, or benefits of app-based drivers shall appear on the same statewide election ballot, the other ballot measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other ballot measure or measures shall be null and void.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting ballot measure approved by the voters at the same election, and such conflicting measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 4. Legal Defense.

The purpose of this section is to ensure that the people's precious right of initiative cannot be improperly annulled by state politicians who refuse to defend the will of the voters. Therefore, if this act is approved by the voters of the State of California and thereafter subjected to a legal challenge which attempts to limit the scope or application of this act in any way, or alleges this act violates any local, state, or federal law in whole or in part, and both the Governor and Attorney General refuse to defend this act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 (commencing with Section 12500) of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney

General shall appoint independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this act. The written affirmation shall be made publicly available upon request.

(c) In order to support the defense of this act in instances where the Governor and Attorney General fail to do so despite the will of the voters, a continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

SEC. 5. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

PROPOSITION 23

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Name.

This act shall be known as the "Protect the Lives of Dialysis Patients Act."

SEC. 2. Findings and Purposes.

This act, adopted by the people of the State of California, makes the following findings and has the following purposes:

(a) The people make the following findings:

(1) Kidney dialysis is a life-saving process in which blood is removed from a person's body, cleaned of toxins, and then returned to the patient. It must be done at least three times a week for several hours a session, and the patient must continue treatment for the rest of their life or until they can obtain a kidney transplant.

(2) In California, at least 70,000 people undergo dialysis treatment.

(3) Just two multinational, for-profit corporations operate or manage nearly three-quarters of dialysis clinics in California and treat more than 75 percent of dialysis patients in the state. These two multinational corporations annually earn billions of dollars from their dialysis operations, including more than $350 million a year in California alone.

(4) The dialysis procedure and side effects from the treatments present several dangers to patients, and many dialysis clinics in California have been cited for failure to maintain proper standards of care. Failure to maintain proper standards can lead to patient harm, hospitalizations, and even death.

(5) Dialysis clinics are currently not required to maintain a doctor on site to oversee quality, ensure the patient plan of care is appropriately followed, and monitor safety protocols. Patients should have access to a physician on site whenever dialysis treatment is being provided.

(6) Dialysis treatments involve direct access to the bloodstream, which puts patients at heightened risk of getting dangerous infections. Proper reporting and transparency of infection rates encourages clinics to improve quality and helps patients make the best choice for their care.

(7) When health care facilities like hospitals and nursing homes close, California regulators are able to take steps to protect patients from harm. Likewise, strong protections should be provided to vulnerable patients when dialysis clinics close.

(8) Dialysis corporations have lobbied against efforts to enact protections for kidney dialysis patients in California, spending over $100 million in 2018 and 2019 to influence California voters and the Legislature.

(b) Purposes:

(1) It is the purpose of this act to ensure that outpatient kidney dialysis clinics provide quality and affordable patient care to people suffering from end-stage renal disease.

(2) This act is intended to be budget neutral for the state to implement and administer.

SEC. 3. Section 1226.7 is added to the Health and Safety Code, to read:

1226.7. (a) Chronic dialysis clinics shall provide the same quality of care to their patients without discrimination on the basis of who is responsible for paying for a patient's treatment. Further, chronic dialysis clinics shall not refuse to offer or to provide care on the basis of who is responsible for paying for a patient's treatment. Such prohibited discrimination includes, but is not limited to, discrimination on the basis that a payer is an individual patient, private entity, insurer, Medi-Cal, Medicaid, or Medicare. This section shall also apply to a chronic dialysis clinic's governing entity, which shall ensure that no discrimination prohibited by this section occurs at or among clinics owned or operated by the governing entity.

(b) Definitions:

EXHIBIT B

Assembly Bill No. 5

CHAPTER 296

An act to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 18, 2019. Filed with Secretary of State September 18, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 5, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that 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. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines "employee" for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello). The bill would exempt specified occupations from the application of Dynamex, and would instead provide that these

occupations are governed by Borello. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed manicurists applicable only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of "employee" described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity's business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill's provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill's enactment.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) On April 30, 2018, the California Supreme Court issued a unanimous decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903 (Dynamex).

(b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers' compensation, Social Security, unemployment, and disability insurance.

(c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.

(d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in Dynamex and would clarify the decision's application in state law.

(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.

(f) The Dynamex decision interpreted one of the three alternative definitions of "employ," the "suffer or permit" definition, from the wage orders of the Industrial Welfare Commission (IWC). Nothing in this act is intended to affect the application of alternative definitions from the IWC wage orders of the term "employ," which were not addressed by the holding of Dynamex.

(g) Nothing in this act is intended to diminish the flexibility of employees to work part-time or intermittent schedules or to work for multiple employers.

SEC. 2. Section 2750.3 is added to the Labor Code, to read:

2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration

shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

(b) Subdivision (a) and the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903 (Dynamex), do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of "employment" in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(c) (1) Subdivision (a) and the holding in Dynamex do not apply to a contract for "professional services" as defined below, and instead the determination of whether the individual is an employee or independent

contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.

(B) "Professional services" means services that meet any of the following:

(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.

(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iii) Travel agent services provided by either of the following: (I) a person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) Services provided by a still photographer or photojournalist who do not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a "submission" is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.

(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(I) Sets their own rates, processes their own payments, and is paid directly by clients.

(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(III) Has their own book of business and schedules their own appointments.

(IV) Maintains their own business license for the services offered to clients.

(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.

(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of

unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for purposes of workers compensation by Section 3200 et seq.; and (C) for all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(L) The business service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

(f) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.

(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works

contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.

(g) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the determination whether the service provider is an employee of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.

(D) The service provider delivers services to the client under service provider's name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.

(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) "Client" means a person or business that engages a service contractor through a referral agency.

(C) "Referral agency" is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

(D) "Referral agency contract" is the agency's contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) "Service provider" means a person or business who agrees to the referral agency's contract and uses the referral agency to connect with clients.

(F) "Tutor" means a person who develops and teaches their own curriculum. A "tutor" does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination whether such an individual is an employee

of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

(i) (1) The addition of subdivision (a) to this section of the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of this section of the Labor Code shall apply to work performed on or after January 1, 2020.

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

SEC. 3. Section 3351 of the Labor Code, as amended by Section 33 of Chapter 38 of the Statutes of 2019, is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2750.3. This subdivision shall not apply retroactively.

SEC. 4. Section 606.5 of the Unemployment Insurance Code is amended to read:

606.5. (a) Whether an individual or entity is the employer of specific employees shall be determined pursuant to subdivision (b) of Section 621, except as provided in subdivisions (b) and (c).

(b) As used in this section, a "temporary services employer" and a "leasing employer" is an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

(1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.

(2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

(3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.

(4) Assigns or reassigns the worker to perform services for a client or customer.

(5) Sets the rate of pay of the worker, whether or not through negotiation.

(6) Pays the worker from its own account or accounts.

(7) Retains the right to hire and terminate workers.

(c) If an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or a temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to perform services for a customer

or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

(d) In circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

SEC. 5. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:

(1) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The individual performs work that is outside the usual course of the hiring entity's business.

(3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of those services are to be performed personally by that individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for their principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, their principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person that are required to be returned to that person or a designee thereof.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if that individual has a substantial investment in facilities used in connection with the performance of those services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

(f) Any member of a limited liability company that is treated as a corporation for federal income tax purposes.

SEC. 6. No provision of this measure shall permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to this measure's enactment.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

EXHIBIT C

1918

WORKMEN'S COMPENSATION

controlled by the whisky interests as well as the wine and beer interests. These interests are friends and comrades of centuries. They have come down the ages hand in hand, and, as the devil has joined them together, let no man put them asunder. They must rest in the same grave.

The world is going dry. No nation engaged in the world war has failed to slaughter or disable the enemy at home before it felt strong enough to engage the enemy abroad. Even Germany stopped the brewing of beer. Our own nation has a dry army and a dry navy and has stopped all distilleries except those manufacturing industrial alcohol and alcohol for use in munitions of war. Why should California fail to keep step with the grand march of the centuries and turn about and face the rear?

The Federal Amendment is practically certain to be ratified. In that event California will go dry. Why should her sister states to the number of 36 pull her into the joy ride on the water wagon? Why not get in voluntarily with honor instead of as an unwilling guest?

The dry forces are on the aggressive. They have no apologies to offer. They are right and are bound to win because they are right. The Bone Dry Prohibition Act will wipe out in California 105 rectifiers, 71 breweries, 1,072 wholesale liquor houses and 13,726 saloons, bottle houses and wine rooms. Not one of these damnable institutions has any right to live a single day. They waste energy and destroy efficiency.

The war uses man power. Those who remain at home must double their productive capacity. This requires the highest efficiency and the man who destroys this efficiency in any way is the best friend of the Kaiser in America.

Vote "Yes" on ballot title "Prohibition." Vote "No" on ballot title "Liquor Regulation." Let no one tell you to vote for both. That would be fatal. You thereby defeat yourself and the cause.

G. F. RINEHART,
Manager Bone Dry Federation of California.

ARGUMENT AGAINST PROHIBITION INITIATIVE ACT.

The people of California are fortunate this year in being able at the coming general election to express themselves quite clearly on the prohibition question. There are two initiative measures on the ballot. Number 1 is the so-called "Rominger bill," which does away with saloons and strong drink, and therefore may be called a strict regulatory or temperance measure. Number 22 is the prohibition or so-called "bone dry" bill, which prohibits the manufacture, importation and sale of any beverage that contains any alcohol at all. It is the radical, extreme proposal of people who would not alone interfere with the personal liberty surrounding the home and the individual therein, but would interfere as well with religious liberty and the right to worship God according to the ritual of many of our churches which have used wine for ages in their ceremonies.

I have not arrived at that stage or state of mind in matters affecting religion which would impel me to dictate to my fellow citizens the manner in which they should worship the Creator. I believe the vast majority of the people of this state think as I do on this subject, and will promptly and more positively than ever before defeat this prohibition measure. It will suffer the more decisive rejection because the people are permitted an alternative on the same ballot which corrects the abuses of liquor and at the same time does not stop the moderate and temperate use of light wines and beers with meals.

Aside from my objection on the broad ground of individual and religious liberty, I am opposed to the prohibition measure from the viewpoints of conservation, consistency and common sense.

Does conservation contemplate the destruction of $150,000,000 worth of property in California at a time when the earning capacity of our people and our lands must be maintained for the good of our government in its great war needs? This is no time for destruction, and when you bring it about, you dwarf the ability of our people to follow their patriotic impulses and make it physically impossible for them to lend their financial aid to help win the war.

On the score of consistency, think of the years and the money spent by government and state in inducing immigration to California for the purpose of settling our valley and mountain lands, and changing our barren and wooded areas into picturesque landscapes by the cultivation of grapes, hops and barley. Is it consistent to have brought about this condition after years of effort, only to brand it now as illegitimate?

Finally, taking the common-sense view, what will "bone dry" prohibition do for us that will not be accomplished by regulation such as the so-called "Rominger bill" prescribes? The one destroys property ruthlessly; the other corrects the abuses and leaves property whole and unimpaired. This is the time when the world-wide conditions confronting our people necessarily call for the best we have in us. Let's build—not destroy.

Vote "No" on number 22.

HILLIARD E. WELCH,
President of Lodi National Bank.

WORKMEN'S COMPENSATION. Senate Constitutional Amendment 30. Amends Section 21 Article XX of Constitution. Specifies matters included within complete system of workmen's compensation. Empowers legislature to establish such system and require any or all persons to compensate their workmen for injury or disability, and dependents thereof for death of said workmen incurred in employment, irrespective of any party's fault, provide for settling disputes by arbitration, industrial accident commission, courts or any combination thereof, procedure therefor, making decisions of such tribunals reviewable by appellate courts. Declares Industrial Accident Commission and State Compensation Insurance Fund unaffected hereby, confirming functions vested therein.	YES	
	NO	

Senate Constitutional Amendment No. 30—A resolution to propose to the people of the State of California to amend section twenty-one of article twenty of the constitution, relative to workmen's compensation.

Resolved by the senate, the assembly concurring, That the legislature of the State of California, at its forty-second regular session commencing on the eighth day of January, nineteen hundred seventeen, two-thirds of the members elected to each of the two houses of the said legislature voting therefor, hereby proposes to the people of the State of California that section twenty-one of article twenty of the constitution be amended to read as follows:

PROPOSED AMENDMENT.

(Proposed changes in provisions are printed in black-faced (type.)

Sec. 21. The legislature is hereby expressly vested with plenary power, unlimited by any provision of this constitution, to create, and enforce a complete system of workmen's 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 workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party. A complete system of workmen's compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workmen and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workmen in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this state, binding upon all departments of the state government.

The legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this state. The legislature may combine in one statute all the provisions for a complete system of workmen's compensation, as herein defined.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this state or the state compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

Section twenty-one, article twenty, proposed to be amended, now reads as follows:

EXISTING PROVISIONS.

(Provisions proposed to be repealed are printed in italics.)

Sec. 21. The legislature *may* by appropriate legislation create and enforce a liability on the part of all *employers* to compensate their *employees* for *any* injury incurred by the said *employees* in the course of their employment, irrespective of the fault of *either* party. The legislature *may* provide for the settlement of any disputes arising under *the* legislation *contemplated by this section*, by arbitration, or by an industrial accident *board*, by the courts, or by either any or all of these agencies, anything in this constitution to the contrary notwithstanding.

ARGUMENTS IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 30.

This amendment is a necessary amplification and definition of the constitutional authority vested in the legislature by the amendment to the Constitution adopted October 10, 1911, to enable the enactment of a complete plan of workmen's compensation, which amendment failed to express sanction for the requisite scope of the enactment to make a complete and workable plan. Such a complete plan embraces four principal things, each an essential component of one act:

First—Compulsory compensation provisions requiring indemnity benefits for injury and death irrespective of fault.

Second—Thoroughgoing safety provisions.

Third—Insurance regulation, including state participation in insurance of this character.

Fourth—An administrative system involving the exercise of both judicial and executive functions.

The earlier amendment contains no expression covering safety and insurance matters, and contains only meager and indefinite authority for administration. Notwithstanding obvious limitations, the legislature did incorporate in one enactment the full plan of compensation, insurance and safety, with adequate provisions for administration. This act, with slight modifications, has been in effect more than four and one-half years. It has given full satisfaction, both in its effects and in its administration in all departments. The state has built up a financial institution of great magnitude—the State Compensation Insurance Fund—which has transacted a business running into millions of dollars.

The proposed amendment is designed to express full authority for legislation; to sanction, establish and protect the full plan in all essentials where the courts have not already passed upon it.

As it proves itself, a law is entitled to approval and to be established upon a firm foundation. As the Workmen's Compensation, Insurance and Safety Act has proved to be beneficent, humane and just, and has wholly justified its enactment in all features, it should receive full constitutional sanction.

EDGAR A. LUCE,
State Senator Fortieth District.

This amendment enlarges the scope of the previous amendment to the constitution, which furnished the authority for our present workmen's compensation act. In addition to compensation of workmen for injuries received, any complete scheme should provide for authority to require the use of safety devices, and that the state, as well as private insurance companies, can furnish insurance to employers against liability for injuries to their employees. The amendment of 1911, while providing for compensation, did not give the desired full and complete sanction for safety legislation or the creation of a state insurance fund. Laws, however, have been passed by the legislature and acted upon for a number of years which compel the use of safety devices, and provide also for the operation of the present state insurance fund.

Our workmen's compensation act has proved such a success and has won such universal favor with employee, employer and public that it should be put upon a firm constitutional basis, beyond the possibility of being attacked on technical grounds or by reason of any questioned want of constitutional authority. Senate Constitutional Amendment No. 30 places beyond any doubt the constitutional authority for a complete workmen's compensation system.

HERBERT C. JONES,
State Senator Twenty-eighth District.

EXHIBIT D

Proposed Amendments to the Constitution of the State of California, with Legislativ

TO BE VOTED UPON AT A SPECIAL ELECTION TO BE HELD ON TUESDAY, THE TENTH DAY OF OCTOBE

AS CERTIFIED TO THE COUNTY CLERKS OF THE SEVERAL COUNTIES OF THE STATE OF CALIFORNIA, AND TO THE REGISTRAR OF VOTERS OF THE CITY AND COUNTY OF SAN FR

STATE OF CALIFORNIA,
Department of State. } SACRAMENTO, CALIFORNIA, September 1, 1911.

To the Qualified Electors of the State of California:

WHEREAS, The Legislature of the State of California, at its thirty-ninth session, beginning on the 2d day of January, A. D. 1911, and ending on the 27th day of March, A. D. 1911, two thirds of all the members elected to each of the houses of said Legislature voting in favor thereof, proposed the following several amendments to the Constitution of the State of California, prepared and distinguished by numbers, to wit: Senate Constitutional Amendment No. 2; Committee Substitute for Senate Constitutional Amendment No. 5; Senate Constitutional Amendment No. 6; Senate Constitutional Amendment No. 8; Senate Constitutional Amendment No. 17; Senate Constitutional Amendment No. 20; Senate Constitutional Amendment No. 22; Senate Constitutional Amendment No. 23; Senate Constitutional Amendment No. 26; Senate Constitutional Amendment No. 32; Senate Constitutional Amendment No. 45; Senate Constitutional Amendment No. 47; Senate Constitutional Amendment No. 48; Senate Constitutional Amendment No. 49; Assembly Constitutional Amendment No. 2; Assembly Constitutional Amendment No. 6; Assembly Constitutional Amendment No. 25; Assembly Constitutional Amendment No. 26; Assembly Constitutional Amendment No. 28; Assembly Constitutional Amendment No. 33; Assembly Constitutional Amendment No. 46; Assembly Constitutional Amendment No. 48; Assembly Constitutional Amendment No. 50—all of which said constitutional amendments were duly passed by the Senate and Assembly of the State of California, in the manner required by section one of article eighteen of the Constitution of the State of California.

NOW, THEREFORE, pursuant to the provisions of an act of the Legislature of the State of California, entitled "An act providing for the calling of a special election to be held on Tuesday, October 10, 1911, and for the submission thereat to the qualified electors of the State all amendments to the Constitution of the State of California, proposed by the Legislature at its thirty-ninth session, commencing on the second day of January, 1911, prescribing and providing for the publication of said proposed amendments, and providing for the manner of holding and conducting such election, and for the canvassing and return of the votes cast thereat," approved March 28, 1911, I have caused to be printed and transmitted, in the manner provided by said act, to each of the County Clerks in this State, and to the Registrar of voters of the City and County of San Francisco, for distribution to said qualified electors, copies of the said proposed amendments to the Constitution of the State of California (and accompanying statements), to be voted upon at the special election to be held on Tuesday, the 10th day of October, A. D. 1911.

Respectfully submitted,

SEAL.

Frank C. Jordan
Secretary of State.

NOTICE TO VOTERS.

In the matter following, the provisions of the constitution as they now exist are printed in the ordinary faced type; the proposed changes in the constitution and new provisions thereof are shown in black-faced type. The reasons given by the legislature for the adoption or rejection of such proposed constitutional amendments are shown enclosed in border.

FRANK C. JORDAN, Secretary of State.

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1. SENATE CONSTITUTIONAL AMENDMENT NO. 2.

CHAPTER 37.—*Senate Constitutional Amendment No. 2, a resolution proposing to the people of the State of California an amendment to section 14 article XI of the constitution of the State of California.*

The legislature of the State of California at its regular session, commencing on the second day of January, in the year nineteen hundred and eleven, two thirds of the members elected to the senate and assembly voting therefor, hereby proposes to the people of the State of California that section fourteen (14) of article eleven (XI) of the constitution of the State of California, be amended to read as follows:

Section 14. The legislature may by general and uniform laws provide for the inspection, measurement and graduation of merchandise, manufactured articles and commodities, and may provide for the appointment of such officers as may be necessary for such inspection, measurement and graduation.

Section 14 of article XI, proposed to be amended as above, now reads as follows:

SEC. 14. No state office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 2 SHOULD BE ADOPTED.

I. The purpose of this amendment is to give the legislature power to provide general and uniform laws for the matters set forth in the amendment, and for the appointment of necessary officers thereunder. Such officers may be state officers and probably will be appointed by the governor, to have jurisdiction throughout the state.

II. The present section of the constitution now prohibits the legislature from creating or continuing a state office for such purposes, but permits the legislature to pass general laws authorizing the appointment of such officers by a county, city, town, or municipality. The design of the constitution, as it now stands without said amendment, is to have matters of local interest regulated and controlled by officers selected by the people of the particular locality, rather than by state at large.

III. The reasons advanced by the majority for the adoption of this amendment are:

1. That the state at large is interested in such inspection, measurement and graduation, and that, therefore, officers representing the people of the whole state should have control of same.
2. That a system under direct state supervision would be more effective.

E. O. LARKINS, Senator, 32d District.

STATEMENT OF AUTHOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 2.

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board to submit the question of the surrender and annulment of such charter to the qualified electors of such county, and, in the event of the surrender and annulment of any such charter, such county shall thereafter be governed under general laws in force for the government of counties.

The provisions of this section shall not be applicable to any county that is consolidated with any city.

REASONS IN FAVOR OF COMMITTEE SUBSTITUTE FOR SENATE CONSTITUTIONAL AMENDMENT NO. 5.

This proposa[illegible] to amend the organic law occupying the second place on the official ballot for the [illegible]suing special election on constitutional amendments, known as the "County Home [illegible]le Amendment," is a logical growth from the successful administration of "charter cit[illegible] formed under the "home rule" provisions of our constitution relating to municipalities.

When the constitution of 1879 was framed it was with the knowledge that the one adopted in 1849 permitted special legislation for county and local governments and for many other purposes. This privilege had been abused to such an extent as to create a widespread demand for uniformity in county government as well as for the regulation of many other matters of state concern. As a result the uniform system of county and township government, since in force, was inserted therein. It was supposed to be impregnable to the assault of those demanding special laws, as to county and township officers, their salaries, and the number and compensation of deputies when such are allowed; but a way was devised, by classifying counties so as to put each county in a class by itself, to obtain on these subjects in the guise of uniformity what formerly was openly secured under special legislation. Thus the old system is still in control and is generally supreme.

Under the constitution of 1849, the officers of a county and of townships in connection with legislative representatives therefrom, practically determined the character and scope of local laws and fixed salaries. While by that system, as under the present, the legislature was, and is now, supposed to pass on county government laws, in more than three fourths of them where they relate to salaries and the creation of sinecures, it was and still is, a fiction to say that it did, or does, do so on their merits. Each county delegation has always been allowed to shoulder the responsibility for two reasons; first, because the measures involved purely local questions; and, secondly, for the reason that every delegation has "an axe" of the same kind "to grind" and thus aids the others in turning the legislative "grindstone."

If the people had a voice in their county government; if they could by vote select freeholders to frame a charter subject to their approval at the polls and also subject to amendment by direct action of the people when it proved insufficient to meet their wants, these special favors and "political plums"—and such they are in most cases, as changes in salaries seldom follow any other than the "rising scale"—would not be parceled out as is now done. The test would then be, does necessity and the benefit of the public service require either new ordinances, more help or more pay? Over half a century of experience has not succeeded in remedying under present methods what would under people's management be accomplished with rapidity.

A county should be governed by the same rule that a discreet business man conducts his affairs. The present county system does not work on such a plan. Home rule in county, township and road government will approximately, if not wholly, secure such a condition. It will have the merit of being a people's government, with the immediate power of correcting abuses in the possession of the electorate, through amendments, the initiative, referendum and recall—all powers that the people can and will reserve for themselves in the preparation of county charters under this amendment to the constitution. Under such auspices, public opinion can be readily harnessed for action when wrongs exist and has proved efficacious, not only as a corrective, but also as a deterrent influence, in holding in check evil practices in local government.

What is true of county and township officers and their regulation and compensation, is also true with relation to the administration of the road affairs of a county or district. Justly, or unjustly, there have been many complaints from this source. All road laws affecting counties and districts are the result of compromises in endeavors to make a general law meet the requirements of communities, wealthy and populous, and of those having little property and a less number of people. Experience indicates that the road question, as this amendment aims to do, as far as counties and districts are concerned, should be placed under the care and direction of the people, and let them as taxpayers and the parties immediately affected, determine in their charters what they want in relation to roads, how they want them constructed, or repaired, by what plan and by whom. It will be entirely in their power to select the county or district plan, in whole, or in part; to permit the supervisors to have complete, or limited authority over the same; to reserve to themselves authority concerning the action of supervisors thereon, and to wholly manage district roads in any manner that they may provide in the charter.

It will be noted that these subjects, viz.:

(*a*) All matters of a local nature, affecting county administration and county and township officers and deputies, their employment, method of selection, amount of compensation, etc.; and

(*b*) Road administration, including construction, repair and maintenance of all except state highways, are the two with which it will be competent, under this proposed amendment, for the people of a county to deal. These subjects generally require in the detail of their administration more of the people's taxes than all the balance of the business affairs of the county; hence it is considered proper that they should form the necleus for the proposed charter county governments.

It was deemed advisable by those who gave this question a great deal of attention during the last session of the legislature, to begin "County Home Rule" on the same lines that "City Home Rule" was initiated in California, trusting to results sure of attainment to broaden the scheme. Under county charters, as was experienced under city charters, there will be evolved a system that for its simplicity, efficiency, adaptability to local necessities and celerity with which the will of the people can be put into execution—protecting them against evils and safeguarding their rights—will not be excelled by any other so far devised.

This amendment was carefully drawn following, as far as applicable, the safe and tried path pursued in the "City Home Rule" movement in reaching its present advantageous position. All [illegible] of the people to secure and exercise the initiative, referendum and recall, on the subjects committed to their care, are conserved, notwithstanding the contrary statement made in opposition to this amendment. City charters reserve these rights to the people in municipalities, and with these powers conferred in the same terms by this amendment to the people of a county, how can it reasonably be said that they can not be exercised under charter county government?

The further objections urged that the number of supervisors is not fixed and that the supervisors and persons allied with them, might combine to secure control of the county government, dictate a charter and monopolize appointments of all officers, presuppose that the people will be idle and will vote to chain themselves to the yoke thus prepared. This can not be assumed in the face of the increasing interest taken by citizens in public matters whenever people's rule is established. Besides it must be borne in mind that under identical authority, city charters have avoided these pitfalls, because the people nominate and elect their freeholders and officers under primary election laws and vote on the charters and amendments thereto. The day has passed in California when "ring county governments" can outwit the people if armed as proposed with the ballot and with the powers of the initiative, referendum and recall.

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in the second session and on final adjournment, when usually over five hundred are submitted. Particularly beneficial would it be, for a new governor, who is inaugurated at the beginning of a session, without that intimate knowledge of the state's business so necessary to the proper discharge of his duties. As it is impossible for him to secure this information in a continuous session, and as any material change in the administrative conditions must be with the approval of the legislature, two years of his term pass by before he can really get into full action. This is an unnecessary loss to the state.

Those who have followed in detail the proceedings of a legislature, must confess that, even when members are actuated by the purest of motives, the congestion of business in committees as well as in the two houses caused by debates and adjournments, is such as to make it impossible, at all times, to deliberate and treat the important questions presented according to their merits and for the best interests of the commonwealth. About one sixth, some times more, of the session is lost by adjournments from Friday until Monday following, during which committees seldom meet, as their quorums are broken by absentees who have wandered to San Francisco and other points. When it is considered that during the last session approximately three thousand bills and resolutions were filed—the average for years being over two thousand—it can be realized why comparatively a small number of them receive adequate attention. The "hit or miss" game settles the fate of most of the bills, accordingly as the author is powerful or weak. For the reasons cited, legislative hearings and investigations have become in a measure really jokes. Of course there are exceptions when good results have been achieved. Hearings and investigations are a necessity. No great business enterprise could get along without them, and the state is as great as any from a business standpoint, and far greater in value in a political sense. A divided session would enable hearings and investigations, when necessary, to take place during recess, when they can be as complete as the subjects involved require, and the benefits flowing therefrom could be quickly secured for the state during the second session.

An instance, for illustration, will suffice to prove that this is another advantage of the divided session over the continuous. During the session of 1909, a general demand arose for the investigation of the ten per cent raise in certain transcontinental freight rates that, it was alleged, approximately taxed California producers and shippers ten millions of dollars annually. Resolutions setting forth the complaints in relation thereto, and also to the outrageous express rates of the time, were introduced in the senate. Their adoption followed, and the investigation ordered thereby commenced before a committee of that body ending as many others have in a continuous session in delay and disappointment.

In a divided session a full investigation would have been forced during recess, even by a minority of the members, and the second session could have granted relief. It will not do to say we now have a reform legislature, and that such things will not happen again. It is to be wished that such legislatures will hereafter be the rule, but lest "history repeat itself" let us be on guard.

We can not do without a law-making body, but we can, and ought to provide one that will in fact deliberate or be forced to do so through the power of public opinion, for without deliberation there can not be wholesome legislation. We should not for many reasons, following in the light of experience, extend the continuous session, nor limit the same more than we have. A path is marked out, however, one that has been used by congress as the only method enabling it to meet its great responsibilities ever since its establishment, and upon which the republic has been led to a marvelous growth and prosperity. This way was found by the use of adjourned sessions and recesses. Outside of bills, local in their nature and effect, and matters of minor interest, all congressional legislation of importance is the result of vacation, or recess, activity by committees. The important committees are in sessions at fixed dates, some almost continuously, investigating, mapping out their labors, receiving the reports of subcommittees appointed to act during the recess of general committees, and hearing the appeals and requests of individuals, of organizations, and of states that present and ever urge action on many questions of national concern.

Thus tried, it appears a solution on safe and progressive lines for our legislative ills; and possesses elements that will enlist the support of powerful agencies in struggles for right and justice to all. A constant sentinel will be publicity, proving harmful only to the unworthy cause, a victory-bearer to the just.

The potent power of the press—without which there could be no effective publicity—would attend in season and out of season and during the sessions, especially in the recess thereof, aiding materially in the labor involved in the examination and discussion of measures pending in the legislature and in the dissemination throughout the state of comments thereon growing out of individual or organized effort. The people would have no better equipped and no abler corps of men in its service than will be found in the ranks of the experienced editors and correspondents who have made a study of statesmanship, and a specialty of reviewing legislative proceedings. As in the reform fights of the past, so in those to come, the pen in the hands of these champions will indeed "be mightier than the sword."

Some objections that have been advanced are as follows:

(*a*) That bills will be held back until the second session to avoid publicity.

It is a matter of record that the two-thirds vote now required can not be secured after the fiftieth day of the session upon a[illegible]t local measures, or such as meet with general approval; objectionable ones can [illegible]btain such support.

(*b*) That members would not work, and [illegible]rests opposed to the people would get more time and a better chance to influenc[illegible]lators.

These objections are untenable.

The member who would be influenced at [illegible] during a recess would lend as willing an ear to the "siren voice" of the boodler du[illegible]he "rush and bustle" of a session.

Painstaking members who have accepte[illegible]r office "as a public trust" would do better work, and an abundance of it; whi[illegible]islative drones," or agents of private interests would be weeded out, or forced ou[illegible] open, by the unfavorable comparison presented between the two classes. Time [illegible]licity would prove efficient means of destroying the power that has been wielded [illegible]past, by the unprincipled apologist or servant of corporate greed.

(*c*) That a false public sentiment, thro[illegible]medium of certain newspapers, could be created during recess on any pending [illegible]

The attempt to do so would react, pro[illegible]he conditions sought to be brought about, viz: Publicity and discussion, which[illegible]suitable scope, will overcome error.

(*d*) That members will be pursued and [illegible]ed by those desiring to be heard on bills.

It is a right of the people to consult with their legislative representatives, and any of the latter who are unwilling to do so should be made subject to the "recall." Valuable aid, rather than trouble, will follow such consultation; it should be invited, not discouraged. There need be no fear on this score.

In conclusion, I respectfully urge that this proposal be given a trial. It can not do harm; it is certain to lead to improved conditions, for the benefit of legislators, of their constituents, and of the state.

No other plan has been suggested that will retain all that is useful of the continuous session; make more effective present safeguards; and by the simple device of a recess invite the coöperation of all our citizens and taxpayers in the endeavor to legislate in a manner to answer the needs of a state of unsurpassed opportunities; to aid in the development of her unequaled resources, and to assist the mental and moral progress of her people.

A. CAMINETTI (author).

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course, would be done were the experiment as is evidenced by the number of criminals penitentiaries in California we have about th and the cases tried before the police court must, therefore, admit that women would be and morality if given the ballot.

It is argued that all women do not wish to for it has become a common practice on el per cent of the male voters, and many wh Women, being more faithful to duty, will cheerfully; besides, their presence on such o enjoyable, as well as a guaranty that everyth who are in touch with public affairs are no they are better and more companionable wi have a common interest with their sons.

The time was when it was thought that to ruin her morals, destroy her religion, impair take away her desire to be a good wife a exploded, and, as we have progressed in the suffrage; let us show the saloon element, the these are the opponents of woman suffrage), a progressive state in every way.

H. G.

REASONS WHY SENATE CONSTITUTIO BE ADO

Suffrage is not a right. It is a privilege no place for a woman, consequently the pri mother's influence is needed in the home. S and neglecting her children. Let her teach gentleness are the charms of woman. Let h is every man's first political law; that no sp surrender of the simplest right of a free an country can shape the destinies of the natio to those duties that God Almighty intended the mother in the home and the dignified in outweigh all the influence of all the mannish

The courageous, chivalrous, and manly me and home builders of the country, are oppos life. There was a bill (the Sanford bill) be leave the equal suffrage question to the wo vote on it. This bill was defeated by the suf would vote down the amendment by a vote government and take care of the women. the protection of men? Why, men have gon itself in defense of woman. To man, woman is no extreme to which he would not go for her exalted position man can be induced to d mix up in affairs that will cause him to lose not have to vote to secure her rights. M elevate her now. As long as woman is wo protection and more consideration than man throws down the scepter of her power and

Woman suffrage has proven a failure in California should profit by the mistakes of suffrage effected. On the contrary, statisti states, Colorado particularly, that divorces h the equal suffrage amendment, showing that also increased among the children, and more due to the lack of the mother's influence i

Woman is woman. She can not unsex her tent with her lot and perform those high du and she will accomplish far more in govern by mixing up in the dirty pool of politics. K the republic. Let not the sanctity of the ho may be running up and down the highway f women defeat this amendment and keep w may retain the respect of all mankind.

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5. SENATE CONSTITUTIO

CHAPTER 9.—*Senate Constitutional Amendmen of the State of California an amendment to amending section fourteen of article I there and to the law of eminent domain.*

The legislature of the State of California, a day of January, in the year one thousand ni members elected to each of the houses of sa proposes that section fourteen of article I of be amended so as to read as follows:

Section 14. Private property shall not be compensation having first been made to, or of way shall be appropriated to the use of an compensation therefor be first made in mone owner, irrespective of any benefits from any which compensation shall be ascertained by civil cases in a court of record, as shall be pre erty for a railroad run by steam or electric p be deemed a taking for a public use, and any private property under the law of eminent d thereby become a common carrier.

Section fourteen of article I, proposed to be

SEC. 14. Private property shall not be take pensation having been first made to, or paid i shall be appropriated to the use of any corpor sation therefor be first made in money or as irrespective of any benefit from any improvem pensation shall be ascertained by a jury, un in a court of record, as shall be prescribed b

REASONS WHY SENATE CONSTITUTIO ADOP

The proposed amendment makes slight ch tution. It will, if adopted, merely add to th ing of private property for a railroad run

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 23 SHOULD BE ADOPTED.

The approval by the electors of Senate Constitutional Amendment No. 23, conferring upon the people the right to recall any elective officer of the state, is an essential step in the movement in this state to place its government in the hands of its people.

Its provisions. By its provisions it enables about 46,000 voters (12 per cent of the vote cast at the last election for governor) to require a public servant, who has held his office at least six months and whose stewardship is questioned by them, to submit the question of his continuance in office to a vote of the electors.

If a majority of all voting at the election say that their servant is unfit to serve them longer, he is thereby retired. Unless a majority shall vote for his recall he remains in office. A 20 per cent instead of a 12 per cent petition is required to institute recall proceedings against a state officer elected from a district of the state.

Its purpose. This recall amendment is intended to introduce into public life, what is recognized as indispensable in private and business life, viz.: The power to remove a dishonest, incapable, or unsatisfactory servant. No private partnership or corporate employer could conduct his or its business successfully without this right of recall. Why then should not the public whose business is vastly more important than private enterprise be permitted to possess this power for its protection if occasion should require? Very few persons question the wisdom of the power of recall over executive and legislative officers. But as to the judiciary, its wisdom and expediency is questioned by some, upon the ground that judges should be free, fearless, and independent and beyond the power and influence of the public will.

Judiciary a branch of government. The judiciary is but an agency of government created by the people for their service, and if its members fail to serve this purpose and prove dishonest, incapable or indifferent to their duties or to the rights of the people, the people should have the power to recall and remove them. Indeed, if the people have not this power then the judges are no longer the servants of the people, but their masters. The people now elect the judges, in the first instance, without any knowledge of their fitness or capacity; why should they not have the power to remove them after they have been tried and found wanting? In fact, every reelection of a judge is in the nature of a recall.

Judges legislate. It is freely admitted that legislators should be subject to the power of the recall. But judges, especially those of the supreme court, by construing the acts of the legislature, interpreting their provisions and declaring the meaning and scope thereof, perform acts of legislation as truly as does the legislature. In fact, when the vast number of such constructions and interpretations, to be found in the reports, are taken into account it will be seen that a very material part of the legislation of the state and nation finds its origin in the courts. In addition, no laws passed by the legislature can operate if not sanctioned by the courts. In truth, so overshadowing is the control of the judiciary over legislation that it is almost a misnomer to speak of the legislature as the law-making branch of the government. For the power to interpret is the power to amend. The power to construe is the power to construct. Therefore, if legislators shall be recalled for enacting bad laws, shall not also these judicial legislators be recalled for making bad laws through improper or corrupt decisions?

People supreme. The people are the source of all power. All government is their creation. Constitutions and laws are also their creation. All are but a means to an end. That end is to preserve liberty and to protect life, person, and property. The preamble to the federal constitution declares, "We, *the people* of the United States * * * do ordain and establish this constitution"; while our state constitution says: "Sec. 2, Art. 1. All political power is inherent in the *people.*" But when a supreme court has spoken what redress has the people? None. However wrongful, however violative of public rights the decision may be, the people are powerless. Witness the income tax case rendered sixteen years ago. The court has supreme power, not the people.

Government divided into departments. Our government is divided into three coördinate branches: Executive, legislative, and judicial. The federal constitution says, "Sec. 1, Art. 1. *All legislative* powers herein granted shall be vested in a congress of the United States which shall consist of a senate and house of representatives."

Our state constitution says: "Sec. 1, Art. 4. *The legislative power* of this state *shall be vested* in a *senate* and *assembly* which shall be designated the legislature of the State of California."

Nothing in either section granting legislative powers to the courts. But so complete has become the control of the judiciary as to what shall be the law that no lawyer will with certainty declare what a statute means until the supreme court has construed, interpreted, amplified, or actually repealed the same by declaring it void. And this power to override the legislative and executive branches of government may be, in fact in nearly all cases is, exercised by a divided court; for example, in the income tax case, five justices decided the case, thus overruling the other four members of the court, overruling former decisions of the court, overruling the congress which had passed the act, and the president, who had approved it. Indeed, it may be said that the one justice, who cast the deciding vote, did all these things alone. And this is the branch of government that stands superior to the people.

Courts usurp. To prove the power and disposition of the courts to usurp legislative powers, it is but necessary to cite the recent decision by the supreme court of the United States in the Standard Oil case where Justice Harlan in his dissenting opinion says: "Now, this court is asked to do that which it has distinctly declared it could not and would not do, *and has now done* what it then said it could not constitutionally do. It has by mere interpretation modified the act of congress and deprived it of practical value as a defensive measure against the evils to be remedied."

Again he says: "It remains for me to refer, more fully than I have heretofore done, to another, and in my judgment—if we look to the future—the most important aspect of this case. That aspect concerns the usurpation by the judicial branch of the government of the functions of the legislative department. The illustrious men who laid the foundations of our institutions deemed no part of the national constitution of more consequence or more essential to the permanency of our form of government than the provisions under which were distributed the powers of government among three separate, equal and coördinate departments—legislative, executive, and judicial."

Again, "Nevertheless, if I do not misapprehend its opinion, the court has now read into the act of congress words which are not to be found there, and has thereby done that which it adjudged in 1896 and 1898 could not be done without violating the constitution."

Again, "After many years of public service at the national capital, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction. As a public policy has been declared by the legislative department in respect of interstate commerce, over which congress has entire control, under the constitution, all concerned must patiently submit to what has been lawfully done, until *the people of the United States—the source of all national power, shall, in their own time, upon reflection and through the legislative department of the government, require a change of that policy.*"

Initiative and referendum powerless. The people will doubtless adopt Senate Constitutional Amendment No. 22 giving themselves the initiative and the referendum, but if the courts retain the power unchecked to undo their effect these powers will be rendered valueless.

Courts must be respected. Respect for the courts must be maintained. But the courts must also respect the rights of the people by upholding human rights, even though it be necessary to set such rights above property rights, for in the end human rights must stand superior to all others. Judges are but human. They do not become more than human when elevated to the bench. The ermine may conceal, but it does not obliterate, the frailties or vices of the wearer. The recall will not make the strong judge weak, nor the weak judge strong. Nor will it swerve the honest and courageous judge one jot or tittle from his true and proper course. It will not terrorize our courts.

Impeachment useless. Impeachment is wholly ineffective, as has been shown by the experience of this state, only one judge ever having been removed, though several attempts have been made under most trying cases.

Recall now in the constitution. A legislative recall (in addition to impeachment) has been in our constitution since 1879, for by Sec. 10 of Art. VI it is provided, "Justices of the supreme court and of the district court of appeal, and judges of the superior courts may be removed by concurrent resolutions of both houses of the legislature." Similar provisions are found in the statutes and constitutions of at least twenty-five other states, while Massachusetts has had the following in her constitution since its adoption in 1780. "Subd. 1., Art. V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are their substitutes and agents and are at all times accountable to them."

"Subd. 1., Art. VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have the right, at such periods and in such manner as they shall establish by their form of government, to cause their public officers to return

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The proposed constitutional amendment was unanimously adopted by the California legislature. If it is adopted by the people it will go far toward improving our system of criminal procedure.

A. E. BOYNTON, Senator, 6th District.

This amendment, commonly called the Boynton amendment, is designed to render it impossible for the higher courts to reverse the judgments of our trial courts in criminal cases for unimportant errors. It is designed to meet the ground of common complaint that criminals escape justice through the technicalities of the law. It will be noticed that the amendment provides that no new trial shall be granted in a criminal case unless on an examination of the entire case (including the evidence) the error has *resulted* in a miscarriage of justice. The rule in California in the past has been that an error, committed in the course of the trial, must be presumed to have been prejudicial and a new trial must be granted, it matters not how guilty the party may be, and oftentimes when the result would have been exactly the same if the error had not been committed.

This amendment would permit a new trial only when the error itself *results* in a miscarriage of justice. The supreme court has held in 21 Cal. 344 that it is a fatal omission to fail to state in an indictment for robbery that the property taken is not the property of the person charged, although the very word "robbery" itself conclusively implies this. In 56 Cal. 406 a conviction was set aside because the letter "n" was accidentally omitted from the word "larceny," though it is probable that no person in the wide world could have had any doubt as to the word intended. In 137 Cal. 590 a conviction for murder was set aside because the indictment failed to state that the man killed was a human being. In 62 Cal. 309 a conviction of murder was reversed because the trial court permitted a surgeon who had examined the wounds to testify as to the probable position of the deceased when the fatal shot was fired. This was in line with the doctrine announced in 47 Cal. 114 that "every error in the admission of testimony is presumed to be injurious unless the contrary clearly appears." Trial judges of long experience declare that it is almost wholly beyond human skill for the most able and conscientious judge, in the course of a long and busy trial extending over days or weeks, to avoid trifling inaccuracies now and then in the thousand and one rulings that they are compelled to make on the spur of the moment.

The object of the amendment is to cure all such inaccuracies, and compel decisions in accord with the actual justice of each particular case. The greatest injury arising from the present system is not the technical reversals, but it is the constant burden under which trial courts labor, by reason of the technical rule above stated. Every judge knows that a new trial always means great expense and generally ends in an acquittal. They are, therefore, compelled, in order to save some justice for the people, to rule almost every point unfairly against the people and in favor of the accused.

This amendment would be a great help in the administration of the law by enabling judges to rule as freely in behalf of one side as the other, and in its fairness stop the growing impression that our judicial decisions are based on technicalities, and not on justice.

E. S. BIRDSALL, Senator, 3d District.

10. SENATE CONSTITUTIONAL AMENDMENT NO. 32.

CHAPTER 66.—*Senate Constitutional Amendment No. 32. A resolution to propose to the people of the State of California an amendment to the constitution of the State of California, by adding to article XX a new section to be numbered section 21, relating to compensation for industrial accidents.*

The legislature of the State of California at its regular session commencing the second of January, 1911, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the qualified electors of the State of California the following amendment to the constitution of the State of California.

Article XX is hereby amended by adding a new section to be numbered section 21 and to read as follows:

Section 21. The legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment irrespective of the fault of either party. The legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section, by arbitration, or by an industrial accident board, by the courts, or by either any or all of these agencies, anything in this constitution to the contrary notwithstanding.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 32 SHOULD BE ADOPTED.

The above proposed constitutional amendment adds a new section to article twenty of the constitution, and is intended to empower the legislature to pass laws for the settlement of accident cases on a compulsory compensation scheme, regardless of the fault of either party as against the present existing law for settling disputes in courts. At present the method of adjusting accidents where no compromise is reached by the parties, is by an expensive, hazardous, unsatisfactory lawsuit, which creates friction and ill feeling between employers and employees and ends with no satisfactory result to either party. The proposed constitutional amendment is to pave the way for laws leading to a rapid, scientific and satisfactory settlement of accident cases out of court, and with as little friction and expense, and with the most productive results possible. Economists, jurists, moralists, employers and employees all frankly admit that the present plan of litigation is economically unsatisfactory and bad to both the employer and the employee, and morally unfair and harsh to the latter, as he is compelled to bear the entire financial and physical shock and cost of accidents. Therefore the necessity for a change to a compensation system is not a matter of controversy, but is an admitted fact.

Statistics show that from 1894 to 1905 the employers of this country paid to accident insurance companies in round numbers about $100,000,000 in premiums for accident insurances; 43 per cent of this sum was paid out by the various companies upon compromises and judgments, and 30 per cent of the above sum finally reached the injured men, showing that the expenses of this system of compensation consumed 70 per cent of the $100,000,000, while but 30 per cent of it went towards compensation for injuries. It has been conservatively estimated that the above sum of $100,000,000 would have paid a reasonable compensation for all the accidents which happened during that entire period in all of the industries carrying that insurance; therefore if a less wasteful method of compensation had been employed the injured men would have been reasonably compensated for their loss and suffering, and the employers would not have spent a single cent more than they did for industrial accident insurance. It is safe to say that every employer would have far preferred to see this money go to their injured men than to the insurance companies.

The above proposed amendment seeks to make the risk of accidents so certain and definite that the employee is always compensated—except in case of wilful conduct—and the employer can scientifically add the cost of his accidents to the costs of production and carry it on to the consumer to be thereby ultimately borne by society. The loss by accidents is to be counted the same as loss through depreciation of machinery or breakages or insurance against fire, all of which are now carried as standard expenses of production by every industry.

The present law prohibits any compulsory scheme for compensation for accidents out of court by arbitration, industrial accident boards, etc., as it is construed by courts to be a taking of property "without due process of law." The recent employers' liability act was made *elective* to avoid this constitutional objection. The proposed amendment is intended to remove this constitutional prohibition and will empower the legislature to enact a compensation law that may be compulsory on all employers. This is the sole object of the proposed amendment. By reducing the range of compensation to certain amounts by abolishing the risky jury verdict, by a settlement without the long delays and great expense of court litigation, by providing for immediate pecuniary relief to the injured, a *compulsory* workingmen's compensation law which may be enacted by the legislature—if this amendment is adopted—would be a great economic and moral gain to both the employers and the employees of this state. It is a line of reform which is being urgently demanded by all classes and rapidly adopted by the federal government and numerous states, after thorough and scientific investigation, hearings, and reports, and will be one of the most practical reform measures ever adopted in this state. It will pave the way for ultimate state insurances against industrial accidents—a thing to be greatly desired. It is earnestly hoped that the amendment will pass by a large majority.

LOUIS H. ROSEBERRY, Senator, 33d District.

This proposed amendment, if adopted at the coming election October 10, 1911, will add a new section 21 to article XX of the state constitution, to read as follows:

"The legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said

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judges and of their clerks and attachés.

2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

3. For the manner in which, the times at which, and the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and of the municipal police force.

4. For the manner in which and the times at which any municipal election shall be held and the result thereof determined; for the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation and government of such boards, and of their clerks and attachés; and for all expenses incident to the holding of any election.

Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent, in any charter framed under said section eight of said article eleven, or by amendment thereto, to provide for the manner in which, the times at which and the terms for which the several county and municipal officers and employees whose compensation is paid by such city and county, excepting judges of the superior court, shall be elected or appointed, and for their recall and removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. All provisions of any charter of any such consolidated city and county heretofore adopted, and amendments thereto, which are in accordance herewith, are hereby confirmed and declared valid.

Section 8½ of article XI, proposed to be amended as above, now reads as follows:

SEC. 8½. It shall be competent, in all charters framed under the authority given by section eight of article XI of this constitution, to provide, in addition to those provisions allowable by this constitution and by the laws of the state, as follows:

1. For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the compensation of said judges and of their clerks and attachés.

2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, and the number which shall constitute any one of such boards.

3. For the manner in which, the times at which, and the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and of the municipal police force.

4. For the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation, and government of such boards, and of their clerks and attachés; and for all expenses incident to the holding of any election.

Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed under said section eight of said article XI, to provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed, for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 48 SHOULD BE ADOPTED.

This amendment was introduced by Senator Beban at the request of Charles Wesley Reed, an attorney of this city. After its introduction certain changes in the proposed amendment were submitted by me and incorporated therein. The argument favoring the adoption of this amendment is based upon the following facts:

In subdivision 1 the words "for the qualifications" are added to enable municipal charters to provide qualifications for police judges which may be deemed necessary on account of the particular duties they perform in the enforcement of municipal ordinances and regulations.

In subdivision 2 the words "for their qualifications, compensation and removal" are added for the purpose of permitting municipal charters to prescribe qualifications for members of city boards of education in addition to those prescribed by general laws. Also to permit such municipalities to fix the compensation of the members of municipal boards of education, which compensation is a charge upon the city. The word "removal" is added to eliminate the contention that a member of the city board of education, being a part of the state school system, is a state and not a municipal officer and that such member can therefore be removed from office only in accordance with the provisions of the state law. This question was recently raised in the attempted removal of our local board of education, and the superior court held that the provisions of the charter authorizing the mayor to remove all appointive officers did not apply to members of the board of education for the reasons above stated.

In subdivision 4 the words "for the manner in which and the times at which any municipal election shall be held and the result thereof determined" are added for the purpose of making the municipal elections a purely municipal affair and for the further purpose of validating the provisions of municipal charters adopting the so-called commission form of government, with initiative, referendum and recall provisions, together with a majority vote rule, such as now exists in this city, Los Angeles, Oakland, Berkeley, and, I believe, in a great many other small cities of the state.

In the last paragraph the words "and municipal officers and employees whose compensation is paid by such city and county excepting judges of the superior court" are added for the purpose of making the election, term of office, and compensation of all officers or employees whose compensation is paid by a consolidated city and county, a purely municipal affair irrespective of the provisions of the state law regarding either the appointment, term or compensation of such officers. The only exception is as to judges of the superior court, who, of course, do not come within the classification of either county or municipal officers. The exception, however, is put in for the purpose of eliminating any contention that such officers as probation officers, superintendent of schools, school teachers, or others connected with the school department are not subject to the provisions of the charter.

The words "and for their recall and removal and" need no explanation. The words "clerks and other employees" are added for the purpose of eliminating the contention that the provisions of the charter referring to the appointees of city and county officers apply only to such as are designated "deputies" and not to those that are merely clerks or employees. The words "method of appointment, classification, and tenure of office" are added for the purpose of authorizing municipal charters to apply the so-called civil service or merit system of appointment and removal to all deputies, clerks, and employees of the consolidated city and county, whether they be deputies or employees of a county or city officer, and thus avoid the prohibition contained in section 16 of article XX of the constitution against any term of office exceeding four years unless otherwise provided for by the constitution.

The final clause of the amendment "all provisions of any charter of any such consolidated city and county heretofore adopted and amendments thereto which are in accordance herewith are hereby confirmed and declared valid" are added for the purpose of validating and confirming all charters which have heretofore been adopted containing any of the provisions above discussed. That is to say, to validate and confirm all of the recent amendments and new charters containing initiative, referendum and recall provisions, as well as such charters as now provide for the civil service system of the officers and employees. This last, of course, applies only to the city and county of San Francisco, it being the only consolidated city and county.

JOHN W. STETSON, Senator, 15th District.

14. SENATE CONSTITUTIONAL AMENDMENT NO. 49.

CHAPTER 67.—*Senate Constitutional Amendment No. 49. A resolution to propose to the people of the State of California an amendment to the constitution of the State of California by amending section 19 of article XI relating to public utilities.*

The legislature of the State of California, at its regular session, commencing on the 2nd day of January, in the year one thousand nine hundred and eleven, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the qualified electors of the State of California the following amendment to the constitution of the State of California so that section 19 of article XI of said constitution shall read as follows:

Section 19. Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services

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thereby the book adopted would c…
The writer is making here no c…
people believe that too frequent c…
necessary for school books, and …
undoubted right to make certain th…
For the use of copyrights, the st…
the copyright or sells it to the sta…
the more books sold, the greater a…
June 30, 1910, the people of this sta…
over $75,000.00 were paid for royalties…
$266,000.00 were paid by the parents…
panies. It is to these companies th…
Hyatt, that "a policy of no chang…
extreme," and that to the people w…
Every argument will be made t…
upon those who pay the royalties to…
should believe, against "the popular…
gant." It is equally unfortunate t…
tion to this amendment, and to all…
"the popular idea." It is because o…
violent opposition; not openly on t…
the less effectively. The campaign…
suffer by the present condition, and…
them to wage that campaign for it…
other circumstances permit.

16. ASSEMBLY CON…

CHAPTER 53.—*Assembly Constitution… people of the State of California a… of the constitution of the State of … its powers and duties.*

The legislature of the State of C… second day of January, one thousand… bers elected to each of the two hous… proposes to the people of the State of … the constitution of the State of Calif…

Section 22. There is hereby creat… members and which shall be known … The commission shall be appointed b… the legislature, in its discretion, may … appointments, said districts to be a… vided further that the three commis… shall serve out the term for which the… shall be appointed by the governor … office during the same term. Upon … commissioner thereafter shall be six … under after such expiration, one of … 1917, two until January 1, 1919, and … the office of commissioner shall occu… son to fill the same for the unexpir… shall, at the beginning of the term … fill vacancies, shall, immediately up… offices. The legislature shall fix the … the salaries of the commissioners, t… by law. The legislature shall have … to each house, to remove any one o… of duty or corruption or incompetenc… of this state, and no person in the e… firm or corporation, which said pers… railroad commission and no person … is in any manner pecuniarily interes… railroad commissioner. No vacancy… maining commissioners to exercise a… ity of the commissioners when in s… commission; but any investigation, … undertake or to hold may be underta… for the purpose by the commission, … pursuant to such inquiry, investiga… commission ordered filed in its offic…

Said commission shall have the p… tion of passengers and freight by … railroad or other transportation co… greater or less or different compens… or for any service in connection t… rates, established by said commissi… fied in such tariff. The commissi… records and papers of all railroad a… mine complaints against railroad a… and all necessary process and send… of the commissioners shall have th… ish for contempt in the same ma… commission may prescribe a unifor… other transportation companies.

No provision of this constitution… of the legislature to confer upon t… kind or different from those confer… conferred upon the railroad commis… islature to confer such additional … ited by any provision of this consti…

The provisions of this section sh… existing law not inconsistent herew… approved February 10, 1911, shall … vision and any other constitutional… And the said act shall have the … after the adoption of this provision… concurrently herewith, except that … held and construed to be the five co…

Section 22 of article XII, propose…

SEC. 22. The state shall be divi… practicable, in each of which one … electors thereof at the regular gub… and whose term of office shall be fo… day of January next succeeding the… of this state and of the district fro… any railroad corporation, or other … attorney or employé; and the act o… act of said commission. Said com… duty, to establish rates of charge… railroad or other transportation co… such changes as they may make; … and other transportation companie… subpœnas and all other necessary … road and other transportation com… oaths, take testimony, and punish … manner and to the same extent as … abuses through the medium of the … system of accounts to be kept by … poration or transportation company… shall be established by such commi… fail to keep their accounts in acco… shall be fined not exceeding twent… agent, or employé of any such cor… in excess thereof, or who shall in a… fined not exceeding five thousand … one year. In all controversies, civi… by said commission shall be deem…