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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)

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

Plaintiff,

v.

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

Respondents.

Case No.: RG21088725

**APPLICATION FOR LEAVE TO FILE
AMICI CURIAE BRIEF AND PROPOSED
BRIEF OF AMICI CURIAE PARTNERSHIP
FOR WORKING FAMILIES, ET AL.
(WORKERS' RIGHTS ADVOCATES) IN
SUPPORT OF PETITIONERS'S MOTION
FOR A WRIT OF MANDATE**

Hearing Date: May 20, 2021
Hearing Judge: Hon. Frank Roesch
Time: 3:20 p.m.
Place: Dept. 17

Date Action Filed: Feb. 11, 2021
Trial Date: Not Set

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1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Prospective *amici curiae* Partnership for Working Families, Gig Workers Rising, Mobile
3 Workers Alliance, Rideshare Drivers United, We Drive Progress, ACCE Institute, Asian American
4 Advancing Justice – Asian Law Caucus, Bet Tzedek, California Employment Lawyers Association,
5 Center for Workers’ Rights, Legal Aid at Work, National Employment Law Project, Women’s
6 Employment Rights Clinic, and Worksafe, Inc. respectfully submit this Application for Leave to File
7 Amici Curiae Brief in Support of Petitioner’s Motion for a Writ of Mandate, as well as the following
8 proposed amici curiae brief. This amici curiae brief is being submitted in advance of the hearing in this
9 action scheduled for May 20, 2021 and in accordance with the May 7, 2021 deadline for the Petitioners’
10 opposition brief. *See Castellanos v. State of California*, RG21088725 (April 16, 2021 Case Management
11 Order).

12 Because of the impact this case will have on hundreds of thousands of app-based workers and
13 their families in California, we respectfully submit that the attached Amici Curiae Brief which will assist
14 the Court in deciding the matter currently set for hearing. *Cf.* Cal. Rules of Court, Rule 8.200(c)(2)
15 (“The application [for leave] must state the applicant’s interest and explain how the proposed amicus
16 curiae brief will assist the court in deciding the matter.”).

17
18 **STATEMENT OF AMICUS CURIAE’S INTEREST**

19 The **Partnership for Working Families** (“Partnership”) is a national federation of regional
20 power building organizations. Together with our 20 affiliates and one emerging coalition, we drive a
21 broad progressive agenda to reshape our built environment to create healthy communities, remake our
22 democracy by building power through civic engagement, and restructure our economy to reduce racial
23 and wealth inequality. All too often, workers face abuse and exploitation on the job, experiences that are
24 compounded when employers seek to evade their responsibilities with subterfuges like worker
25 misclassification. Our affiliates witness the direct and daily harms this type of misclassification cases,
26 which encompass not only loss of wages, but other vital employee protections of the basic dignity of
27 individuals at work.

1 Alongside the Partnership is a worker-led movement with a clear goal in mind: ensure that app-
2 based workers are treated with dignity and respect at work. The organizations below represent well over
3 55,000 drivers in California who have been, and continue to be, impacted by Proposition 22:

4 **Gig Workers Rising** (“GWR”) is a campaign supporting and educating app and platform
5 workers who are organizing for better wages, working conditions, and respect. GWR has a network of
6 nearly 10,000 gig workers across California. Launched in 2018, GWR has supported workers in their
7 organizing – from an international day of action protesting Uber’s initial public offering to lobbying for
8 the successful passage of California Assembly Bill 5. In addition to supporting worker organizing, GWR
9 hosts regular educational workshops and trainings, including a recent series of workshops for gig
10 workers navigating state benefits and resources during the COVID-19 pandemic.

11 **Mobile Workers Alliance** (“MWA”) includes more than 19,000 Southern California app
12 drivers, including Uber and Lyft drivers, and has organized over the last four years to raise standards for
13 all workers in the gig economy. In their fight to demand living wages, a true voice on the job, and an end
14 to misclassification by passing Assembly Bill 5, they have travelled throughout California to share their
15 reality with policymakers, community leaders, and other drivers. Specifically, MWA engages in
16 organizing, service, advocacy, and educational activities for drivers on the local and state level.

17 Founded in 2018, **Rideshare Drivers United-California** (“RDU”) is an organization started by
18 app-based drivers in the parking lot of Los Angeles International Airport in response to wage cuts. RDU
19 is a democratic drivers’ organization, with a driver-elected Board of Directors, who have advocated for
20 full labor rights for all app-based workers through protest, strikes and advocacy such as assistance in
21 securing unemployment benefits and wage theft claims. RDU was also key to providing driver’s voices
22 during the consideration and passage of Assembly Bill 5 in California. With more than 19,000 driver
23 members across the state of California, RDU membership includes many full-time drivers who have
24 driven for Lyft, Uber, and other app-based ride-hail companies, for nearly as long as many of them have
25 been companies.

26 **We Drive Progress** (“WDP”) is a movement joined by 7,000 app-based drivers across Northern
27 California, that fights for better wages, and working conditions for gig workers. As part of a coalition of
28 thousands of drivers statewide, WDP drivers and coalition members are responsible for the billions that

1 companies like Uber, Lyft, and their investors pocket every year. We Drive Progress engages in
2 organizing, advocacy, and training for gig workers. Through this work, WDP's mission is to secure
3 economic fairness for gig workers and unite drivers to win a real voice in California.

4 These worker advocates may organize different workers in different parts of the state, but they
5 join in common cause today to respectfully urge this Court to grant prompt review in this matter.

6 In addition, numerous workers' rights and community advocates join this brief.

7 **ACCE Institute** is a statewide grassroots organization that organizes with over 15,000 low-
8 income and working-class Californians across the state. Our members are majority Black or Latinx and
9 care deeply about the way people of color and low-income people of all races are treated in the arenas of
10 housing, education, criminal justice, employment, and civic engagement spaces. What is clear to ACCE
11 members, is that the classification of workers as employees vs. contractors is not just a matter of
12 scheduling freedom. It is a matter of access to fair wages and critical benefits like healthcare, paid time
13 off, and retirement. When employers are not required to correctly classify workers, the impacts are most
14 deeply felt by workers who are already being left behind in the current economy and have impounded
15 effects on the families and communities those workers belong to.

16 **Asian Americans Advancing Justice - Asian Law Caucus** ("Advancing Justice - ALC") was
17 founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian
18 and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing
19 Justice - ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los
20 Angeles, Chicago, Atlanta, and Washington, DC. Advancing Justice - ALC has a long history of
21 advocating for low-wage immigrant workers through direct legal services, impact litigation, community
22 education, and policy work. Advancing Justice - ALC's clients regularly include misclassified workers,
23 including ride-hail and other gig drivers.

24 **Bet Tzedek** - Hebrew for the "House of Justice" - was established in 1974, and provides free
25 legal services to seniors, the indigent, and the disabled. Bet Tzedek represents Los Angeles County
26 residents on a non-sectarian basis in the areas of housing, welfare benefits, consumer fraud, and
27 employment. Bet Tzedek's Employment Rights Project assists low-wage workers through a combination
28 of individual representation before the Labor Commissioner, litigation, legislative advocacy, and

1 community education. Bet Tzedek’s interest in this case comes from over 15 years of experience
2 advocating for the rights of low-wage workers in California. As a leading voice for Los Angeles’s most
3 vulnerable workers, Bet Tzedek has an interest in ensuring that workers are correctly classified, and that
4 they receive the benefits and protections they are entitled to.

5 **The California Employment Lawyers Association** (“CELA”) is an organization of California
6 attorneys whose members primarily represent employees in a wide range of employment cases,
7 including individual, class, and representative actions enforcing California’s wage and hour laws.
8 CELA has a substantial interest in protecting the statutory and common law rights of California workers
9 and ensuring the vindication of the public policies embodied in California employment laws. The
10 organization has taken a leading role in advancing and protecting the rights of California workers, which
11 has included submitting amicus curiae briefs and letters and appearing before the California Supreme
12 Court in employment rights cases such as *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903
13 (2018), *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, *Gentry v. Superior Court*
14 (2007) 42 Cal.4th 443, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, *Iskanian v.*
15 *CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, and *Ayala v. Antelope Valley*
16 *Newspapers, Inc.* (2014) 59 Cal.4th 522, as well as in cases before the Ninth Circuit.

17 **The Center for Workers' Rights** is a Sacramento-based, non-profit legal services and advocacy
18 organization whose mission is to create a community where workers are respected and treated with
19 dignity and fairness. To bring that vision into reality, we provide legal representation to low-wage
20 workers, advocate for initiatives to advance workers’ rights , and promote worker education, activism,
21 and leadership in the greater Sacramento area. The Center for Workers' Rights represents misclassified
22 workers in their appeals for unemployment benefits before the California Unemployment Insurance
23 Appeals Board and in claims for wages at the California Labor Commissioner's Office.

24 **Legal Aid at Work** (formerly the Legal Aid Society – Employment Law Center) (“LAAW”) is a
25 public interest legal organization founded in 1916 that advances justice and economic opportunity for
26 low-income people and their families at work, in school, and in the community. Since 1970, LAAW has
27 represented low-wage clients in both individual and class action cases involving a broad range of
28 employment-related issues, including wage theft, labor trafficking, retaliation, and discrimination.

1 LAAW frequently appears in federal and state courts to promote the interests of clients from wage theft
2 both as counsel for plaintiffs and as amicus curiae. In addition to litigating cases, LAAW advises
3 thousands of low-wage workers, including misclassified workers, on their employment rights through its
4 Workers’ Rights Clinics and helplines, and represents misclassified workers in their appeals for
5 unemployment insurance benefits before the California Unemployment Insurance Appeals Board and in
6 claims for wages at the California Labor Commissioner’s Office. Protecting low-income workers,
7 including ride-hail drivers, from the ills of misclassification is a core part of LAAW’s work.

8 The **National Employment Law Project** (“NELP”) is a nonprofit legal organization with more
9 than fifty years of experience advocating for the employment and labor rights of underpaid and
10 unemployed workers. For decades, NELP has focused on the ways in which various work structures,
11 such as mislabeling workers as “independent contractors,” exacerbate income and wealth inequality, the
12 segregation of workers by race and gender into poor quality jobs, and the inability of workers to come
13 together to negotiate with business over wages and working conditions. NELP has litigated directly and
14 participated as amicus curiae in numerous cases and has provided Congressional and state testimony
15 addressing the issue of employment relationships and independent contractors, including
16 misclassification by companies in the app-based economy

17 The **Women’s Employment Rights Clinic of Golden Gate University School of Law** (WERC)
18 is an on-campus non-profit that serves the dual purpose of training law students and providing critical
19 legal services to the community. WERC represents low-wage workers, predominately women and
20 immigrants, through impact litigation, individual representation, policy advocacy and community
21 education. For more than twenty-five years, WERC has advised and represented employees
22 misclassified as independent contractors across various industries. Since the COVID-19 pandemic,
23 WERC has assisted rideshare drivers, including Lyft and Uber drivers, in accessing unemployment
24 insurance benefits.

25 **Worksafe, Inc.** is non-profit organization that advocates for protective worker health and safety
26 laws and effective remedies for injured workers through the legislature and courts. Worksafe is also a
27 Legal Support Center funded by the State Bar Legal Services Trust Fund. We engage in California state-
28 wide policy advocacy as well as advocacy on a national level to ensure protective laws for workers.

1 Worksafe has an interest in the outcome of this case because we advocate for the workplace rights of
2 low wage vulnerable workers. Many low wage workers who are affected by misclassification face
3 significant health and safety issues since their employers are not held accountable for their obligations to
4 have a safe and healthy workplace under California laws. Additionally, Worksafe has participated in
5 prior efforts to expand protections for app-based workers. Worksafe has a continuing interest in ensuring
6 workplace justice for all workers.

7
8 **THE PROPOSED *AMICI CURIAE* BRIEF WILL**
9 **ASSIST THE COURT IN DECIDING THIS MATTER**

10
11 At its core, the case before this Court presents a simple question: can a statutory ballot
12 initiative supplant California’s Constitution? The answer is very simply no. Proposition 22 purports to
13 rewrite the employment relationship of app-based workers, styling them as independent contractors.
14 Yet, the proposition’s drafters took vast liberties in their task, running roughshod over the legislature’s
15 plenary authority to enact a complete system of workers’ compensation; undermining the court’s
16 prerogative to say what the law is; hamstringing the Assembly and Senate from considering unrelated
17 legislation; and combining unrelated provisions in violation of the single subject rule. Indeed,
18 hundreds of thousands of app-based workers and their families have been affected by Proposition 22
19 and continue to experience harms that this court can remedy.

20
21 This brief adds to the ably-drafted petition filed in this case in two ways. First, amici draw the
22 Court’s attention to the numerous ways in which the Legislature’s authority to establish a plenary
23 system of workers’ compensation is undermined that run deeper than even Petitioners noted. Second,
24 amici offer additional reasons why, contrary to the perspective of Respondent, Petitioner’s second and
25 third causes of action are clearly ripe given the law’s effect on recently passed legislation and the
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1 restrictions currently placed on the Legislature’s action. Thus, when viewed from any angle, this
2 challenge is ripe for consideration and Proposition 22 must fail in its entirety.

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4
5 DATED: May 7, 2021

Respectfully submitted,

6 *Reynaldo A. Fuentes*
7 _____

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14 ROBINSON, SERVICE EMPLOYEES
15 INTERNATIONAL
16 UNION CALIFORNIA STATE COUNCIL, AND
17 SERVICE EMPLOYEES INTERNATIONAL
18 UNION,

19 Plaintiffs,

20 v.

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

25 Respondents.

Case No.: RG21088725

**AMICI CURIAE BRIEF OF AMICI CURIAE
PARTNERSHIP FOR WORKING
FAMILIES, ET AL. (WORKERS' RIGHTS
ADVOCATES) IN SUPPORT OF
PETITIONERS'S MOTION FOR A WRIT
OF MANDATE**

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ARGUMENT

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A. THE ISSUANCE OF A WRIT OF MANDATE HALTING THE OPERATION OF PROPOSITION 22 IS PROPER GIVEN THE POTENTIAL FOR HARM TO HUNDREDS OF THOUSANDS OF APP-BASED DRIVERS

In ordinary times, the disruptive effect of a constitutionally infirm ballot initiative like Proposition 22 would present an urgent issue for any court. But these are extraordinary times, particularly for the tens of thousands of app-based drivers working in California whose livelihoods will be dramatically impacted by the outcome of this case. From unrelenting economic uncertainty, to increasing demands for essential services like grocery delivery and transportation, and to disproportionate exposure to the COVID-19 virus, app-based drivers continue to bear significant risks to their health, safety, and livelihoods on the job. The numerous workers’ rights organizations that have signed on to this brief have done so for a purpose: they understand that labor has dignity and ought to be protected by the law. Indeed, hundreds of thousands of app-based workers and their families in California continue to face dangerous working conditions and low pay, a situation exacerbated by Proposition 22.

In addition, the effects of this constitutionally infirm statute fall hardest on workers of color. According to a Bureau of Labor Statistics survey on the so-called “on-demand” economy, Black and Latino workers make up almost 42 percent of workers for Uber, Lyft, and other “electronically mediated work” companies.¹ The Pew Research Center has found that “Black and Latino workers are

¹ Yet, Black and Latino workers only comprise less than 29 percent of the overall U.S. workforce. See Bureau of Labor Statistics, U.S. Dep’t of Labor, *Electronically Mediated Work: New Questions in the Contingent Worker Supplement*, Monthly Labor Rev. (Sept. 2018), <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.

1 more likely to have worked for an online platform.”² And in California the numbers are staggering. In
2 San Francisco, for example, nearly 80 percent of app-based transportation and delivery workers are
3 people of color, and a majority are immigrants.³ In Los Angeles County, 23 percent of drivers for Uber
4 and Lyft are Black, compared to only 8 percent of the general population.⁴ Facing racist exclusions
5 from decent jobs with livable wages and benefits, these workers of color have few choices – and
6 sometimes no choice – other than to accept work with punishing conditions, including the unilateral
7 removal of employee benefits.⁵

9 Indeed, hundreds of thousands of app-based workers of color work for corporations whose
10 compliance with California’s employment and labor laws will determine whether they have enough
11 money to be housed, can access unemployment insurance to feed their families, or even have basic
12 protective equipment to shield themselves from a deadly virus. When the California Court of Appeal
13 affirmed a preliminary injunction requiring the reclassification of Uber and Lyft drivers as employees
14 who should be granted baseline rights and protections, *People v. Uber Technologies, Inc.*, 56
15 Cal.App.5th 266 (2020) *opn. mod. and pet. for review* filed Dec. 1, 2020, No. S265881, workers began
16 feeling hopeful.
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19

21 ² Annette Bernhardt and Sarah Thomason, *What Do We Know About Gig Work in California? An*
22 *Analysis of Independent Contracting*, University of California Berkeley Labor Center (June 2017) at 7,
23 <https://laborcenter.berkeley.edu/pdf/2017/What-Do-We-Know-About-Gig-Work-in-California.pdf>.

24 ³ Chris Benner, *On-Demand and On-the-Edge: Ride-Hailing and Delivery Workers in San Francisco*,
25 University of California Santa Cruz Institute for Social Transformation (May 2020) at 70,
26 https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemand-n-OntheEdge_MAY2020.pdf.

27 ⁴ *More than a Gig: A Survey of Ride-Hailing Drivers in Los Angeles*, UCLA Institute for Research on
28 Labor and Employment (May 2018), <https://irle.ucla.edu/wp-content/uploads/2018/05/Final-Report.-UCLA-More-than-a-Gig.pdf>.

⁵ Abbie Langston, Justin Scoggins, Matthew Walsh, *Race and the Work of the Future: Advancing*
Workforce Equity in the United States, PolicyLink (2020)
[https://www.policylink.org/sites/default/files/Race and the Work of the Future United States FIN](https://www.policylink.org/sites/default/files/Race%20and%20the%20Work%20of%20the%20Future%20United%20States%20FINAL.pdf)
[AL.pdf](https://www.policylink.org/sites/default/files/Race%20and%20the%20Work%20of%20the%20Future%20United%20States%20FINAL.pdf) (detailing how workers of color are over-represented in the gig economy and face dangerous
and inequitable working conditions).

1 But Proposition 22’s doubtful constitutionality leaves a cloud of uncertainty over nearly every
2 aspect of worker’s lives. Drivers, as well as consumers, need the clarity that comes from settling the
3 employee status of hundreds of thousands of workers. Moreover, a ballot initiative that subverts
4 California’s Constitutional principles should not be the reason that workers lose access to core legal
5 protections such as workers’ compensation, access to safe workplaces, paid leave, and the right to
6 collectively bargain.
7

8 For example, Proposition 22’s preemption of local labor standards puts local emergency paid
9 sick leave out of reach for workers who may contract COVID-19 and may thus prevent them from
10 staying home if they are ill. *See* Cal. Bus. & Prof. Code § 7464(b)(2) (preventing local governments
11 from passing any law that would extend “scheduling; leave; healthcare subsidies [or] any other work-
12 related stipends, subsidies, or benefits”). By definition, this broad preemption would strip cities of their
13 ability to enforce local laws for the benefit of their citizens. Additionally, by placing an
14 insurmountable supermajority requirement on the Legislature to pass any new law that would directly
15 or indirectly protect these workers, Proposition 22 leaves drivers without any meaningful recourse to
16 address these and other harms. *Id.* at § 7465(a).
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19 For these reasons, this Court should play the vital role that courts have on multiple occasions
20 and issue a writ of mandate to redress Proposition 22’s constitutional infirmities. *See Bramberg v.*
21 *Jones*, 20 Cal.4th 1045 (1999) (granting writ of mandate prohibiting enforcement of Proposition 225,
22 which imposed Congressional term limits); *Legislature v. Eu*, 54 Cal.3d 492 (1991) (in original writ
23 proceeding, upholding in part and invalidating in part Proposition 140, which imposed term and
24 compensation limits upon state legislators); and *Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989)
25 (in original writ proceeding, upholding in part and invalidating in part Proposition 103, which
26 regulated insurance rates).
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1 **B. PROPOSITION 22 GIVES RISE TO SERIOUS CONSTITUTIONAL CONFLICTS**
2 **THROUGH ITS INFERIOR WORKERS’ COMPENSATION SCHEME AND ITS**
3 **POTENTIAL NULLIFICATION OF DULY ENACTED STATE LAWS.**

4 **a. Workers’ Compensation.**

5 As the Petition in this case lays bare, through intentional drafting, Proposition 22 sets up an
6 inferior and incomplete system of occupational injury coverage for app-based drivers and
7 impermissibly purports to rob the Legislature of its plenary authority under the Constitution to create a
8 “complete system of workers’ compensation.” Pet. for Writ of Mandate at 9-13. Allowing a statutory
9 initiative to undermine the substantive provisions of the State Constitution would not only set a
10 dangerous legal precedent, but would also have profound impacts on workers’ health and well-being.
11 Those impacts run deeper than even the Petitioners conveyed.
12

13 For instance, California’s workers’ compensation law has flexibly responded to the needs of
14 workers in times of crisis. In response to the COVID-19 pandemic, the Governor issued Executive
15 Order N-62-20 on May 6, 2020 which created a rebuttable presumption of workers’ compensation
16 coverage for those employees engaged in work at their employer’s direction outside of the home and
17 who contracted COVID-19. *See* Questions and Answers on Executive Order N-62-20, available at
18 <https://www.dir.ca.gov/dwc/Covid-19/FAQs.html>.⁶ Such a presumption is a vital tool to ensure that
19 workers exposed to the COVID-19 virus on the job have access to the medical and disability coverages
20 available under the law. In fact, the order made covered employees – including those app-based
21 workers made employees under Assembly Bill 5 – “eligible for all benefits applicable under the
22 workers’ compensation laws” in California, including temporary disability payments, medical
23 coverage, and death benefits for those who contracted the virus at work. *See* Executive Order N-62-20
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28 ⁶ Executive Order N-62-20 was subsequently codified in state law via Senate Bill 1159 (Hill), Ch. 85,
Reg. Sess. 2019-2020.

¶ 4; accord Cal. Lab. Code § 3212.88(c) (“The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by [state workers’ compensation law].”).

But Proposition 22 contains no equivalent presumption and provides that app-based drivers are independent contractors “notwithstanding any other provision of law,” thereby curtailing the reach of the Governor’s executive order (and subsequent legislation). This is particularly harmful to essential app-based workers on the front lines of grocery delivery and critical transportation services who were covered employees until Proposition 22’s passage. *See* Pet. for Writ of Mandate at 8.

Petitioners provide stark examples of what it would mean for workers to be deprived of a “complete system of worker’ compensation” through Proposition 22’s unconstitutional usurpation of the Legislature’s authority. For example, there is the loss of vocational training for drivers, benefits for permanent disabilities (a fact all too common among professional drivers), and prompt access to administrative adjudication. *Id.* at 12-13. But there is more.

First, it is unclear if Proposition 22’s occupational injury insurance would be offered on a no-fault basis, as is required under California workers’ compensation law.⁷ In fact, the Proposition suggests the opposite in many circumstances, by noting that occupational injury insurance may be *denied* by the carrier if the worker was online, but “engaged in personal activities.” *See* Cal. Bus. & Prof. Code § 7455 (d). This is a disturbing outcome given the no-fault presumption’s long history in California law and liberal construction by the courts of workers’ compensation law in favor of coverage. *See, e.g., Mason v. Lake Delores Group, LLC*, 117 Cal.App.4th 822, 830, 838 (2004) (confirming principles that workers’ compensation law be liberally construed in favor of coverage and

⁷ The presumption goes unmentioned in the new sections Proposition 22 added to the Business & Professions Code.

1 that coverage is not broken even if worker is engaged in “certain acts necessary to the life, comfort,
2 and convenience of the employee while at work”).

3 In addition, Proposition 22 obscures whether an app-based employer is required to pay for
4 workers’ compensation coverage and is prohibited from foisting the costs of coverage onto an
5 employee. In contrast, under California law, providing workers’ compensation coverage without
6 monetary burden to the employee is an employer’s obligation. *Compare* Cal. Bus. & Prof. Code § 7455
7 (disallowing operations unless a company “carries, provides, *or otherwise makes available*”
8 occupational insurance, seemingly authorizing an app-based company to offer coverage, but not pay
9 for it) (emphasis added) *with* “Answers to Frequently Asked Questions About Workers’ Compensation
10 for Employers,” Department of Industrial Relations, available at <https://www.dir.ca.gov/dwc/faqs.html>
11 (noting that, under California law, employers are obligated to provide workers’ compensation to their
12 employees and clarifying that employers may not require cost-sharing). It is thus inconceivable, even
13 under the most generous interpretation, that the occupational injury benefit available in Proposition 22
14 comes close to offering a “complete system of workers’ compensation” as envisioned under the
15 California Constitution, making the tension noted by Petitioners even more significant.

16 Respondents contend that any powers vested in the Legislature are retained by the People to
17 exercise in parallel through the statutory initiative process. Resp. Demurrer at 12. This principle, in
18 isolation, is correct, but Respondents err in their application of it here. While the People have
19 coextensive powers with the Legislature to legislate via statutory ballot initiatives, it does not follow
20 that that power includes the ability to amend or erode a constitutional provision via a statutory ballot
21 initiative. *See* Pet. for Writ of Mandate at 11 (“Given that the Supreme Court has questioned whether
22 an initiative *constitutional amendment* can limit the Legislature’s plenary power under article XIV,
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1 section 4, an *initiative statute* that attempts that task must necessarily fail.”) (internal citations omitted
2 and emphasis in the original).

3 Moreover, Proposition 22 was drafted with the explicit intent that an all-or-nothing system of
4 workers classification be adopted under California law for certain app-based workers. *Id* at 9. Article
5 11 provides that Proposition 22 should fail *in its entirety* if any application of the independent
6 contractor test in Section 7451 of Article II is found unavailing. *See* Cal. Bus. & Prof. Code § 7467(b).
7 Given the measure’s impermissible invasion of the Legislature’s constitutional function in establishing
8 a complete system of workers’ compensation, the measure’s independent contractor test would not
9 apply with full force and effect to that context, meaning that Proposition 22 must be found invalid *in*
10 *toto* on those grounds alone.
11

12
13 **b. Nullification of duly enacted state laws and restriction on the Legislature.**

14 Prompt review of the Constitutional issues raised by Petitioners is also necessary because, from
15 a public policy perspective, Proposition 22 purports to repeal recently-adopted state legislation to
16 address the COVID-19 pandemic. Indeed, Respondents’ contention in their demurrer that Petitioner’s
17 second and third causes of action are not ripe fails to apprehend the immediate harms and uncertainty
18 wrought by Proposition 22. *See* Resp. Demurrer at 17. For instance, the newly added Business and
19 Professions Code Section 7465, subdivision (b) would attempt a retroactive repeal of legislation
20 otherwise properly enacted by the Legislature. That Section reads:
21

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

25 Subdivision (a), in turn, and as noted by Petitioners, requires that any amendment to the
26 Proposition be consistent with and further the purposes of the measure, be passed by a seven-eighths
27 vote of each house, and be printed in its final form online for twelve business days before its passage.
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1 Cal. Bus. & Prof. Code § 7465(a). Yet, without fanfare, Section 7465(b) would have the effect of
2 reaching back and nullifying laws that were enacted under the lawful rules and Constitutional powers
3 of the Legislature. *See* Cal. Const., art. IV, §§ 7 (each house may set rules for its proceedings); 8(b)(3)
4 (majority vote required to pass bills).

5 This is not an academic issue. In response to the COVID-19 pandemic, the Legislature enacted
6 numerous laws that would protect employees from the ravages of the pandemic. These included
7 mandating access to supplemental paid sick leave beyond the federal minimum under Assembly Bill
8 1867 and codifying the Governor’s Executive Order regarding presumptive workers’ compensation
9 coverage for those infected with COVID-19 under SB 1159. Both laws were expressly intended to
10 extend to app-based workers. But, because they were enacted after October 29, 2019 and were not
11 passed consistent with the amendment requirements of Section 7465, Subdivision (a) – including the
12 supermajority vote, consistency, and publication requirements⁸ – they could be rendered dead letters
13 for many app-based workers.⁹

14 Moreover, Proposition 22 *currently* restrains the Legislature by applying its supermajority vote
15 threshold to any legislation lawmakers might consider that would authorize an entity to collectively
16 bargain on behalf of wages, hours, working conditions, and more. *See* Cal. Bus. & Prof. Code §
17 7465(c)(4). Thus, this issue is certainly ripe for consideration, despite Respondents’ arguments to the
18 contrary. Indeed, consideration of this issue is a pure question of law, given that no further
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24 ⁸ For example, for a bill to pass muster under Proposition 22, it would need, among other things, 70
25 affirmative votes in the State Assembly (7/8ths of its 80 members). AB 1867 only had the support of
26 59 members of the Assembly, thus it was not passed pursuant to the amendment provisions in the
27 initiative. *See* AB 1867 (Committee on Budget), Ch. 45, Reg. Sess. 2019-2020. SB 1159 *only* had
28 support of 69 members of the Assembly. *See* SB 1159 (Hill), Ch. 85, Reg. Sess. 2019-2020.

⁹ An outcome ever more present as app-based companies continue to argue that Proposition 22 applies
retroactively to eliminate any past liability. *See, e.g., James v. Uber Technologies*, Case No. 3:19-cv-
06462-EMC (Feb. 21, 2021) (arguing that class certification should fail on the grounds that Proposition
22 is retroactive and thus bars claims against the company).

1 developments can change the underlying impact of Section 7456(c)(4)'s prohibition on unrelated
2 policymaking. Real hardship is evident, given that no legislator would seriously consider proposing
3 legislation to grant collective bargaining rights to app-based workers in the face of such an
4 insurmountable vote threshold and it would be unrealistic to think that the Governor or the Legislature
5 would defy the law to enact such a policy. It is also app-based workers who are harmed, as they lose
6 yet another formal path with which to collectively bargain over wages and working conditions.
7

8 To allow Proposition 22 to stand would be a chilling outcome for tens of thousands of workers
9 and offer a potential roadmap for abuse in future ballot initiatives. It also stands to reason that the
10 public may have thought twice about offering their support for Proposition 22 had they been aware that
11 a vote in favor of the measure could threaten popular measures enacted to combat a deadly pandemic.
12 As the Petitioners note, “[t]he few voters who actually read to the end of the measure are unlikely to
13 understand what the technical terms of the amendment provision actually mean or the consequences of
14 defining certain legislation as an amendment.” Pet. for Writ of Mandate at 21.
15

16 CONCLUSION

17 The petition in this case presents foundational legal questions that must be resolved by this
18 Court. Proposition 22 subverts core Constitutional principles, strips from the judiciary its power to
19 interpret the meaning of our laws, impermissibly limits future areas of lawmaking regarding app-based
20 platform regulation or collective bargaining, and brazenly does violence to the comprehensive system
21 of workers’ compensation that keeps workers safe on the job. This brief adds to Petitioner’s well-
22 crafted legal arguments by describing how Proposition 22’s effect on state workers’ compensation
23 amplifies its unconstitutional character, as well as noting how technical provisions, buried deep in the
24 text of the measure, could undo duly enacted state laws and currently constrain the Legislature’s
25 prerogative.
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1 Thus, the worker advocates signed on to this brief urge this Court to act decisively to grant
2 Petitioner's request for a writ of mandate, not only to address the legal issues in this case, but because
3 of the human toll of Proposition 22. Hundreds of thousands of workers have suffered as the result of a
4 handful of corporations deciding, unilaterally, that their workers were not employees. By drafting and
5 promoting this unlawful measure, those corporations deny workers necessary certainty and clarity
6 regarding their rights on the job, even as those workers continue to face an unprecedented pandemic
7 and economic calamity.
8

9 This is a situation this Court can and must remedy.
10

11
12 DATED: May 7, 2021

Respectfully submitted,

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14 *Reynaldo A. Fuentes*

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16 REYNALDO FUENTES, SBN 329360
17 Partnership for Working Families
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PROOF OF SERVICE

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

I am a citizen of the United States employed in the by the Partnership for Working Families in Washington, DC.

I am over the age of 18 and not a party to this cause of action.

My business address is 1305 Franklin St., Suite 501, Oakland, CA 94612.

On May 7, 2021, I served a true copy of the Application for Leave to File Amici Curiae Brief and Amici Curiae Brief (“documents”) on the following parties:

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16 **X BY MAIL:** I enclosed the documents in a sealed envelope addressed to each central
17 office location for the persons addressed above via United Parcel Service. I am a resident in the
18 jurisdiction where the mailing occurred.

20 **X BY ELECTRONIC SERVICE:** By transmitting the documents via email to the above
21 parties' email addresses.

24 Executed in Washington, DC on May 7, 2021.

25 I declare under penalty of perjury, that the foregoing is true and correct.

26 *Reynaldo A. Fuentes*

27 _____
28 REYNALDO FUENTES

CERTIFICATE OF LENGTH AND FORMAT

Pursuant to California Rule of Court 3.1113(d), this brief is 10 pages long, not counting the caption pages, the application for leave to file, the proof of service, and this certificate. In addition, pursuant to Rule 3.1113(f), this brief does not contain a table of contents or table of authorities.

Dated: May 7, 2021

Respectfully submitted,

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PARTNERSHIP FOR WORKING FAMILIES