SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

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 KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations, Respondents, PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE and KEITH YANDELL, Intervenors.	Case No. RG21088725 ORDER GRANTING PETITION FOR WRIT OF MANDATE

Petitioners Hector Castellanos, Joseph Delgado, Saori Okawa, Michael Robinson, Service Employees International Union California State Council, and Service Employees International Union petition the Court to issue a writ of mandate compelling Respondents State

of California and Katie Hagen not to enforce any provisions of the Protect App-Based Drivers and Services Act (Bus. & Prof. Code, §§ 7448 *et seq.*) as unconstitutional. The act was adopted by the people of California directly as an initiative statute and is more popularly known as Proposition 22, as it was so denominated on the 2020 general election ballot. The State opposes the petition, as do the proponents of Proposition 22, Protect App-based Drivers and Services, Davis White, and Keith Yandell, who have intervened as respondents in this case. The matter came for hearing on August 20, 2021, and the Court now rules as follows.

I. WORKER'S COMPENSATION

The California Constitution vests in the Legislature the "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation." (Cal. Const. art. XIV, § 4.) Petitioners argue that, by exempting workers previously classified as employees from workers' compensation, Prop 22 has infringed on the Legislature's plenary power to create a "complete" system of worker's compensation.

The Legislature has the power to include or exclude workers from the worker's compensation system. (*See, e.g.*, Lab. Code, § 3352, subd. (a)(7) [excluding "person[s] . . . participating in sports" from worker's compensation coverage after Court of Appeal found them to be covered in *Graczyk v. Workers' Comp. App. Bd.* (1986) 184 Cal.App.3d 997].) Before Proposition 22 went into effect, the Legislature passed an act adopting the "ABC test" for employment status, which was understood to reclassify app-based drivers as employees. (Stats. 2019, ch. 296 [hereafter "AB5"].)

The key provision of Proposition 22 provides that "[n]otwithstanding any other provision of law, including, but not limited to, the Labor Code, . . . , 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 [certain] conditions are met." (Bus. & Prof. Code § 7451.) This Section exempts "app-based drivers" from the "ABC" test of AB5 that would otherwise be applied to determine their status as employees or independent contractors. As a result, app-based drivers

have been removed from participation in the worker's compensation system, as presently codified, because it protects only employees, not independent contractors. (*See* Lab. Code § 3600, subd. (a) ["Liability for the compensation provided by this division, . . . shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death . . . ."].)

Proposition 22 is not an improper exercise by the people of a power entrusted only to the Legislature. The term "legislature" in Article XIV Section 4 includes the people acting through the initiative power. (*See Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1043 ["[L]ong-standing California decisions establish that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power . . . ."]; *Fair Political Practices Commn. v. Superior Court* (1979) 25 Cal.3d 33, 42 ["The people having reserved the legislative power to themselves as well as having granted it to the Legislature, there is no reason to hold that the people's power is more limited than that of the Legislature . . . ."].) Because the Legislature has the power to legislate in this area, the People of the State of California also have right to enact laws by statutory initiative. (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 440 ["The electorate's lawmaking powers 'are identical to the Legislature's.'"]; *see* Cal. Const., art. 4, § 1 ["The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum."].)

Proposition 22 is constitutionally problematic for another reason that defies such easy resolution. Petitioners and amici law professors also make the more subtle argument that the *Independent Energy Producers* case is distinguishable because the statutory initiative in that case increased the power to the Public Utilities Commission, whereas Proposition 22 limits a power vested in the state legislature by the Constitution. (*See Independent Energy Producers Assn.*,

supra, 38 Cal.4th at p.1044 fn.9.) Article XIV, Section 4 also provides that the Legislature shall have the power to create worker's compensation laws "unlimited by any provision of this Constitution." (Cal. Const. art. XIV, § 4.) However, the Constitution also provides that the Legislature may not act to amend or repeal an initiative statute without a subsequent vote of the people. These two provisions are in conflict. If the Legislature's authority is limited by an initiative statute, its authority is not "plenary" or "unlimited by any provision of [the] Constitution" (Cal. Const. art. XIV, § 4); rather, it would be limited by Article II, Section 10, subdivision (c). The Supreme Court has held that, as an interpretive guide, the initiative power should be zealously protected and "any reasonable doubts" should be resolved "in favor of the exercise of this precious right." (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250.) But here, the plain language of Article XIV, Section 4 indicates that it is "unlimited by any provision of" the California Constitution. (Cal. Const. art. XIV, § 4.) When Section 4 was ratified in 1918, the statutory initiative power already existed in the Constitution. The grant of plenary power to the Legislature conflicts with a limitation on its power to amend an initiative statute under Article II Section 10. The grant of power is not "plenary" if the Legislature's power to include app-based drivers in the worker's compensation program is limited by initiative statute. It is not "unlimited by any provision of this Constitution" if it is limited by an initiative statute. The plain meaning of Article XIV, Section 4's plenary-and-unlimited clause governs over the more general limitation on amendment in Article II Section 10. In short, if the People wish to use their initiative power to restrict or qualify a "plenary" and "unlimited" power granted to the Legislature, they must first do so by initiative constitutional amendment, not by initiative statute.

Proposition 22's Section 7451 is therefore an unconstitutional continuing limitation on the Legislature's power to exercise its plenary power to determine what workers must be covered or not covered by the worker's compensation system. When the People adopted Proposition 22,

they expressed their intention that its provisions be severable, except that, if Section 7451 is held to be unconstitutional, the whole Act should be stricken. (Bus. & Prof. Code, § 7467, subd. (b).)

II. AMENDMENTS

The California Constitution provides that the people of the state may enact laws through the initiative process. (Cal. Const. art. II, § 8.) When the people pass an initiative statute, the Legislature's power to amend that statute is limited by the California Constitution: "The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval." (Cal. Const., art. II, § 10, subd. (c).) Because the voters have the power to limit or allow amendment to their initiative statutes, they also have the power, *a fortiori*, to attach conditions to permissible amendments. (*See Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, 167.)

Proposition 22 also included an unusual provision allowing the Legislature to amend its provisions using an unusual procedure. The legislature may amend Proposition 22 "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." (Bus. & Prof. Code, § 7465, subd. (a).) "Any statute that amends Section 7451 does not further the purposes of this chapter." (*Id.*, subd. (c)(2).) Proposition 22 also provides two additional specific definitions of what constitutes an amendment: "[a] 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" (id., subd. (c)(3)) and a "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" (*id.*, subd.

(c)(4).) Petitioners argue that these substantive definitions of subsequent legislation as amendments is unconstitutional.

These provisions are ripe for a facial challenge. A statute is ripe for facial challenge when it is passed and in effect. (*Alliance for Responsible Planning v. Taylor* (2021) 63 Cal.App.5th 1072, — ["Nothing precludes resolution of the controversy, as the facial allegation does not depend on the application of the measure to a particular petitioner or future County interpretation."].) In a facial challenge, the Court considers only the text of the statute. (*Today's Fresh Start, Inc. v. Los Angeles Cty. Off. of Educ.* (2013) 57 Cal.4th 197, 218 ["To resolve a facial challenge, we consider 'only the text of the measure itself, not its application to the particular circumstances' of this case"].) The statute will be upheld unless the party asserting unconstitutionality shows that it is unconstitutional in any application. (*See In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 48-49.)

The Amici Curiae worker advocacy organizations separately argue that the issue is ripe because of two pieces of emergency legislation passed between October 29, 2019, and the effective date of Proposition 22. The Legislature passed, and the Governor signed, two new laws governing working conditions and workers' compensation coverage for COVID-19 illness contracted on the job. But no party to the case is currently challenging the constitutionality of these laws. And the petition in this case does not challenge the constitutionality of Section 7465, subdivision (b) on the grounds that it retroactively invalidates laws duly adopted under the constitution and legislative rules then in force. This issue is not properly before the Court and is expressly not litigated or decided by this petition.

The law professor Amici Curiae state that they have been unable in their research to find another initiative statute with amendment restrictions as stringent as Proposition 22's. However interesting, this point is irrelevant to the legal analysis. Everything in Section 7465 is in the nature of an exception to the default amendment rule in Article II, Section 10, Subdivision (c). If Section 7465 had not been included, the Legislature could amend Proposition 22 by a simple

majority vote according to each house's rules, followed by a popular referendum. With Section 7465 enacted, the Legislature can still amend Proposition 22 by a simple majority vote according to each house's rules, followed by a popular referendum. (*See* Cal. Const. art. II, § 10., subd. (c).) All Section 7465 provides is another way to amend the initiative statute, albeit one that is difficult to the point of near impossibility.

To the degree that Section 7465, subdivisions (a) and (b), attempt to apply conditions to amendments proceeding under Article II Section 10, subdivision (c)'s majority-vote-then-referendum procedure, they are unconstitutional. To avoid the constitutional conflict, the Court should narrowly construe the "seven-eighths majority" and "consistency" requirements only to the non-referendum procedures in Section 7465, subdivisions (a) and (b).

Similarly, to the degree that Section 7465 purports to require 12 days of publication of bills amending Proposition 22, those rules may be unconstitutional to the degree they purport to apply to bills proceeding under the majority-vote-then-referendum procedure. Each house of the Legislature is empowered to determine its own rules of proceedings. (Cal. Const., art. 4, § 7, subd. (a).) To avoid the constitutional conflict, the Court narrowly construes the publication rule to apply only to the non-referendum procedures in Section 7465, subdivisions (a) and (b).

Petitioners argue that Subdivisions (c)(3) and (c)(4) are unconstitutional because they interfere with the judiciary's power to say what is or is not an amendment under the California Constitution. This is contrary to their plain language. Both exceptions reference compliance with Section 7465, subdivisions (a) and (b), which describe an optional, no-popular-vote process for the Legislature to adopt amendments to Proposition 22. Even if these subdivisions were susceptible to Petitioner's interpretation, the Court may avoid this constitutional conflict by construing them as clarifying definitions of the term "amendment" for that process only and not an attempt to change the definition of the term "amendment" as used in Article II, Section 10, subdivision (c).

As part of its power to allow amendment without a further vote of the people, an initiative statute can define the scope and conditions that must be met to adopt an amendment without a subsequent referendum. (*See People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568 ["The Legislature may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment, 'and then only upon whatever conditions the voters attached to the Legislature's amendatory powers.'"].) There are two important constitutional limits on the people's power to limit future acts of the legislature. Regardless of the conditions set by an initiative, it can be amended by a legislative statute if that statute is ratified by a vote of the people. (*See* Cal. Const. art. II, § 10, subd. (c) ["The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors . . . ."].) The second limitation is implied by the initial grant of power: an initiative statute cannot limit subsequent legislation unless that subsequent legislation would constitute an "amendment" to the initiative, as that term is used in Article II, Section 10, subdivision (c).

A statute can constitute an amendment in several ways. First, it can literally change or alter statutory language: "A statute amends an initiative when it is 'designed to change an existing initiative statute by adding or taking from it some particular provision.'" (*People v. Marquez* (2020) 56 Cal.App.5th 40, 46.) But that is not the only way. "[C]onflict with existing law is neither an essential, nor even a normal attribute of an amendment." (*Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776.) A statute also constitutes an amendment if it "adds to or takes away from an existing statute is considered an amendment." (*Franchise Tax Bd.*, *supra*, 80 Cal.App.3d at p.776.) "If its aim is to clarify or correct uncertainties which arose from the enforcement of the existing law, or to reach situations which were not covered by the original statute, the act is amendatory, *even though in its wording* it does not purport to amend the language of the prior act." (*Franchise Tax Bd.*, *supra*, 80 Cal.App.3d at p.777.) "[T]he Legislature cannot indirectly accomplish, via the enactment of a statute which essentially amends

any formula adopted to implement an initiative's purpose, what it cannot accomplish directly by enacting a statute which amends the initiative's statutory provisions." (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1487.) "Any doubts should be resolved in favor of the initiative and referendum power, and amendments which may conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislatively enacted ordinances, where the original initiative does not provide otherwise." (*Proposition 103 Enforcement Project*, *supra*, 64 Cal.App.4th at p.1486.) But "The voters get only what they enacted, ' "not more and not less'"", and the Legislature "is free to address matters that are related to, but distinct from, the subjects covered by the initiative or which the initiative does not specifically permit or prohibit." (*People v. Marquez*, *supra*, 56 Cal.App.5th at p.46.)

The briefs do not discuss the (c)(3) "unequal regulatory burdens" exception in any depth. Nevertheless, there are imaginable statutes that would constitute a direct or indirect amendment of Proposition 22. If the Legislature, for example, passed a law requiring that an app-based driver must be an employee in order to pick up food from a restaurant, to pick up a passenger at the airport, or to drive on the public highways, it would take away from the rights guaranteed by Prop 22 even if it did not alter its language. Resolving doubts in favor of the initiative power, Subdivision (c)(3) passes muster against a facial challenge.

Subdivision (c)(4) is not so simple. There is no other language in Proposition 22 that directly relates to labor representation or collective bargaining. The Proposition proponents argue that independent contractor status is incompatible with collective bargaining: that "[o]ne of the *fundamental* issues Prop 22 addresses is the right of app-based drivers to work as independent contractors—a status that precludes them from collective bargaining under a century of state and federal law." (Proponents' Mem. P&A Opp. Pet. at p.24.) They further argue that "[a]ny subsequent attempt by the Legislature to reimpose on app-based drivers traditional employment relationships like collective bargaining rights would 'undo' this choice." (*Ibid.*)

But the most maximal state law covered only by Subdivision (c)(4) would create a guild through which independent contractors would bargain collectively their contract terms and working conditions. This may alter their bargaining power vis-à-vis the network companies they contract with, but the Court cannot find that it would diminish their "independence" or transmute them into employees. The Court therefore finds that Subdivision (c)(4) unconstitutionally purports to limit the Legislature's ability to pass future legislation that does not constitute an "amendment" under Article II, Section 10, Subdivision (c).

Proposition 22 itself states that, to the degree that the provisions of Section 7465 are determined to be unenforceable, the People intended its remaining provisions to continue in full force and effect. (Bus. & Prof. Code, § 7467, subd. (a).)

III. SINGLE-SUBJECT RULE

Initiative statutes must be limited to a single "subject." (Cal. Const. art. II, § 8(d) ["An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."].) Courts interpret the term "subject" liberally to uphold initiative statutes "which disclose a reasonable and common[-]sense relationship among their various components in furtherance of a common purpose." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253.) The general test is whether the parts of a statute are "reasonably germane to a common theme, purpose, or subject." (*Brown v. Superior Court* (2016) 63 Cal.4th 335, 350.)

Proposition 22 itself tells us its purposes: "(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[; and ¶] (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." (Bus. & Prof. Code, § 7450, subds. (a)-(d); *see also* Bus. & Prof. Code, § 746, subd. (c)(1) ["The purposes of this chapter are described in Article 1 (commencing with Section 7448)."].)

The common "theme, purpose, or subject" of Proposition 22, then, is protecting the opportunity for Californians to drive their cars on an independent contract basis, to provide those drivers with certain minimum welfare standards, and to set minimum consumer protection and safety standards to protect the public. Worker's compensation is a benefit afforded only to employees. (*See* Lab. Code § 3600, subd. (a) ["Liability for the compensation provided by this division, . . . shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death . . . ."].) The Proposition also provides different alternative insurance for on-the-job injury for app-based drivers.

No other part of Proposition 22 deals with collective bargaining rights other than Section 7465, subdivision (c)(4), and it does so only obliquely and indirectly, as a side effect of a contested construction of certain antitrust laws as barring independent contractors from bargaining collectively. This is related to Proposition 22's subject but it is utterly unrelated to its stated common purpose. A prohibition on legislation authorizing collective bargaining by app-based drivers does not promote the right to work as an independent contractor, nor does it protect work flexibility, nor does it provide minimum workplace safety and pay standards for those workers. It appears only to protect the economic interests of the network companies in having a divided, ununionized workforce, which is not a stated goal of the legislation.

IV. FINDINGS AND ORDER

The Court finds that Section 7451 is unconstitutional because it limits the power of a future legislature to define app-based drivers as workers subject to workers' compensation law.

The Court finds that Section 7465, subdivision (c)(4) is unconstitutional because it defines unrelated legislation as an "amendment" and is not germane to Proposition 22's stated "theme, purpose, or subject."

Because Section 7451 is not severable from the remainder of the statute, the Court finds that the entirety of Proposition 22 is unenforceable.

The petition is therefore **GRANTED**. Petitioners are **ORDERED** to serve and file a proposed judgment and form of writ consistent with this Order within 10 court days of service of notice of entry of this Order.

Dated: August 20, 2021

Frank Roesch
Judge of the Superior Court