No. A163655

IN THE

Court of Appeal for the State of California

FIRST APPELLATE DISTRICT, DIVISION FOUR

HECTOR CASTELLANOS, *et. al*,
Petitioners-Respondents,
v.

STATE OF CALIFORNIA AND KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations,
Defendants-Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE AND KEITH YANDELL,
Intervenors-Appellants.

On Appeal from the Superior Court of Alameda County, No. RG21088725
The Honorable Frank Roesch, presiding

UNOPPOSED APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANTS

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CERTIFICATE OF INTERESTED PARTIES

Amicus curiae certifies that it has no outstanding shares or debt securities in the hands of the public, and it does not have a parent company. No publicly held corporation has a 10% or greater ownership in *amicus curiae*. *Amicus curiae* is aware of no entities or persons who must be listed in this certificate other than entities listed in the parties' certificates.

/s/ *Adam G. Unikowsky*
Adam G. Unikowsky

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF

Pursuant to California Rules of Court, rule 8.200(c)(1), the Chamber of Commerce of the United States of America (the "Chamber") respectfully files this unopposed application for permission to file an amicus brief.[1]

Under the California Rules, applications for permission to file amicus briefs must "state the applicant's interest" and "explain how the proposed amicus curiae brief will assist the court in deciding the matter." Cal. Rules of Court, rule 8.200(c)(2).

Applicant's interest. The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amicus has a strong interest in this proceeding. One of the Chamber's key priorities is protecting innovation and entrepreneurialism against policies that stifle economic growth.

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[1] Pursuant to California Rule of Court, rule 8.200(c)(3), *amicus* certifies that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

Amicus's members include network companies[2] and other businesses that rely on the flexibility of independent contractor relationships, which has promoted innovation and growth for *amicus*'s members and contractors alike. Classifying drivers who use apps as "employees" would substantially impair the ability of *amicus*'s members to enter such economic relationships. *Amicus* therefore encourages this Court to uphold Proposition 22, which protects such relationships.

How the amicus brief will assist the court in deciding the case. "Even when a party is very well represented, an amicus may provide important assistance to the court." *Neonatology Assocs., P.A. v. Commissioner* (3d Cir. 2002) 293 F.3d 128, 132 (Alito, J.). "Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group." *Id.* (quotation marks omitted); *see Lee v. Amazon.com, Inc.* (2022) 76 Cal.App.5th 200, 210 n.1 (noting that court "granted applications to file amicus briefs from several nonprofit organizations whose missions relate to the subject matter of this case").

The Chamber's proposed amicus brief fulfills all three of these functions. The Chamber's broad and diverse membership gives it "particular expertise," *Neonatology*, 293 F.3d at 132 (quotation marks omitted), in assessing the policy implications of judicial decisions.

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[2] Proposition 22 uses "network compan[ies]" to describe companies such as Lyft that provide platforms for purposes of facilitating local transportation and delivery. Bus. & Prof. Code, § 7463(f), (*l*), (p).

Moreover, the Chamber argues "points deemed too far-reaching for emphasis by a party intent on winning a particular case" and "explain[s] the impact a potential holding might have on an industry or other group." *Id.* (quotation marks omitted). Although the parties rightly focus on the legal issues addressed by the Superior Court, the Chamber makes more general policy arguments regarding Proposition 22's impact on businesses. For these reasons, the Chamber's proposed amicus brief would assist the Court in deciding this case.

CONCLUSION

The application for permission to file an amicus brief should be granted.

Dated: June 1, 2022

Respectfully submitted,

/s/ Laurie J. Edelstein

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PROPOSED AMICUS BRIEF

This case concerns the "gig" economy—that is, the economic activity that arises when entrepreneurs seeking to accept "gigs" can find customers via digital platforms. Such entrepreneurs differ from employees of ordinary companies because they can accept "gigs" if and when they please, rather than having their wages and hours dictated by an employer. The "gig" economy is nothing new—independent contractors have always been a critical part of the economy. But new technology has opened the door for millions of entrepreneurs to strike out on their own without being tied down to a traditional job. Today, a person who wants to rent out a house, design software, be a personal trainer, or undertake innumerable other activities can use various digital platforms to find customers. Such workers benefit greatly from the independence and flexibility of app-based work. They can earn a living while working where and when they want, using as many apps as they want. *See* U.S. Chamber of Commerce, Employment Policy Division, *Ready, Fire, Aim: How State Regulators Are Threatening the Gig Economy and Millions of Workers and Consumers* at 12 (Jan. 2020), https://bit.ly/3z0bKuF ("*Ready, Fire, Aim*").

One prominent type of "gig" allows people to make extra money using their cars. App-based drivers can and do use multiple platforms for local delivery or transportation services to work as often or as little as they like, without being tied down to a traditional job. This freedom allows workers to make their own schedules and choose their own projects. Proposition 22 ensures that app-based drivers keep this autonomy, protecting their ability to work as independent

contractors, while providing additional benefits and protections. *See* Bus. & Prof. Code, § 7449(e)–(f).

In addition to being constitutional, Proposition 22 is good policy. Classifying app-based drivers as employees is harmful to network companies, drivers, and consumers. Network companies would be subject to unexpected liability and cumbersome regulatory requirements. Companies may pass additional costs on to consumers in the form of higher prices or a different range or level of service. They may also scale back their business or adjust their operations to save costs, which could limit options for consumers. Drivers would suffer as businesses might be forced to control how drivers provide services. For instance, if a court classified a ride-sharing app as the employer of drivers who use the app, then the app developers might be forced to control the hours during which drivers use the app, ban drivers from keeping the app open if they are not actively seeking customers, or force drivers to work in high-volume areas—thus eliminating the very flexibility that drivers value about ride-sharing apps in the first place.

Petitioners ask the Court to invalidate Proposition 22 so that app-based drivers should be deemed employees of the app developers. *See Dynamex Operations, W. Inc. v. Superior Court* (2018) 4 Cal.5th 903, 959-60. But Proposition 22 reflects the overwhelmingly popular and sensible policy judgment that app-based drivers should not be treated as employees. Wage-and-hour laws prevent employers from exploiting economically dependent employees. They were not designed for network companies that simply match drivers with customers. Such platforms exercise virtually no control over drivers'

activities. Instead, drivers typically have the unrestricted right to use multiple apps simultaneously and to use those platforms to control their own work. Classifying app-based drivers as employees would cause economic harm and would frustrate the will of California voters. The Court should uphold Proposition 22.

ARGUMENT

I. The "Gig" Economy Has Created Economic Opportunities For Millions Of Independent Contractors, Including Drivers.

This case requires the Court to determine the legal status of participants in the so-called "gig" economy—that is, the economy that allows entrepreneurs to accept "gigs" if and when they please, rather than being tied down to particular jobs requiring them to work a set number of hours per day at their employer's direction. The "gig" economy is nothing new—independent contractors pursued "gigs" long before the Internet. But by facilitating the matching of entrepreneurs and their customers, new technologies have dramatically expanded the "gig" economy, to the benefit of both the "gig" economy's suppliers and its customers.

As of 2017 there were more than 40 million independent contractors in the United States—people "of all ages, skill, and income levels—consultants, freelancers, contractors, temporary or on-call workers—who work independently to build businesses, develop their careers, pursue passions and/or to supplement their incomes." MBO Partners, *The State of Independence In America: Rising Confidence Amid A Maturing Market* 2 (2017), https://bit.ly/3wVj9tQ; *see Ready, Fire, Aim*, *supra*, at 13-17 (cataloguing data on size of "gig" economy). That segment of the workforce is growing rapidly,

too, at a rate three times faster than the overall economy. Freelancers Union & Upwork, *Freelancing In America: 2017* at 3 (2017), https://bit.ly/3wVoAbS ("*Freelancing In America*"). If that growth rate holds, independent workers may be the majority of the U.S. workforce by 2027. *Id.*

The "gig" economy is particularly robust in California. The approximately 400,000 California workers who provide rides or deliveries through app-based platforms every month collectively earn billions of dollars in income. Brad Williams, *Impacts of Eliminating Independent Contractor Status for California App-Based Rideshare and Delivery Drivers* 2 (July 2020), https://bit.ly/3iQMThJ ("*Williams Report*"). Indeed, if Petitioners have their way, overturning Proposition 22 could result in reclassification of nearly two million workers—10% of California's workforce. *Ready, Fire, Aim, supra*, at 24.

Network companies that facilitate the process of matching providers with customers have spurred the dramatic growth of the "gig" economy. These platforms are remarkably diverse. Some focus on specific areas, such as Gigster (software engineering) and Airbnb (short term accommodations). Others encompass a wider range of services, such as Thumbtack (home, business, wellness, creative design), and Upwork (accounting, copy editing, personal fitness). Still others are involved in commercial real estate, healthcare, handyman services, pet care, legal services, finance, fundraising, customer services, logistics, and management consulting.

One of the best-known new types of "gigs" in the Internet economy are "gigs" that allow people to use their car to make extra

money. Before the app revolution, thousands of Americans owned cars and were willing to use them to make extra cash. But they had no realistic way to find customers. Picking up hitchhikers or volunteering to deliver at restaurants was not a realistic option. If those Americans wanted to drive for a living, they would have to quit their job, find employment as a taxi driver or courier, and—in many cases—drive someone else's car. This was undesirable for Americans who wanted to avoid being tied down to an employer.

Apps such as Uber, Lyft, Grubhub, Postmates, and DoorDash changed all that. Drivers who want to find passengers or deliveries can simply download an app and be connected with passengers or consumers who want their services. The rise of such apps has created new job opportunities for drivers of all stripes, especially those who want or need flexible arrangements. By working independently—when, where, how, and for whom they wish—drivers who are constrained from taking traditional 9-to-5 jobs can nevertheless boost their income. A parent can work around school functions; a retiree can supplement savings; an artist can work in between shows; a person with a long commute can make extra money by driving someone else home. Independent work allows workers to take control of their earning potential and to decide how to spend their time.

Meanwhile, many app-based drivers choose to contract with multiple companies simultaneously to ensure the greatest volume of work. Independent contractors may take full advantage of the flexible working relationship by "toggling back and forth between different … companies and personal clients, and by deciding how best to obtain business" such that profits are "increased through their initiative,

judgment, or foresight—all attributes of the typical independent contractor." *Saleem v. Corp. Transp. Grp., Ltd.* (2d Cir. 2017) 854 F.3d 131, 144 (internal quotation marks and alterations omitted). A driver, for example, could take a job for a traditional black-car company for one trip, find a passenger using Uber's app for the next trip, take a personal client to the airport after that, and then finally deliver a dinner using Grubhub's app. Or a student can minimize student loan debt by balancing a courseload with "gig" work to make ends meet. *Ready, Fire, Aim*, *supra*, at 16 (noting that 37% of workers aged 18 to 29 reported engaging in "gig" work in the previous year, two-thirds of whom were students).

This independent contractor arrangement offers real benefits to workers, including drivers. Because independent contractors own the necessary tools and equipment for the job, they have the flexibility and freedom to deploy those resources however they see fit. In turn, that independence and autonomy leads the overwhelming majority of independent workers to report being satisfied in the independent contractor relationship. "In survey after survey, gig workers report that the primary benefit of gig work is flexibility. They gravitate to gig work because it allows them to make their own schedules and choose their own projects. They like feeling like their own boss." *Ready, Fire, Aim*, *supra*, at 36 (footnote omitted). Indeed, according to the Bureau of Labor statistics, eight in ten independent contractors preferred their gig work to "traditional" employment, while only one in ten said they would prefer a traditional job. *Ready, Fire, Aim*, *supra*, at 17. Independent workers also report feeling added security from having the power to choose diverse clients, rather than a single

employer, and to control their own costs and benefits. *Freelancing In America* at 4.

The rise of the "gig" economy has also benefited the public. It is now easier than ever for a consumer to find a driver, technician, or any other service provider within minutes, merely by using their cell phone. The "gig" economy has carried particular benefits for lower-income Americans who historically have had trouble accessing goods and services that higher-income Americans take for granted. For example, many lower-income Americans live in "food deserts"—areas with low access to stores selling fresh, healthy food. Yet a recent study shows that 90% of people living in food deserts have at least one digital food access option—and the service rate exceeds 95% in food deserts within metropolitan areas. Caroline George & Adie Tomer, *Delivering to Deserts: New Data Reveals the Geography of Digital Access to Food in the U.S.*, Brookings (May 11, 2022) https://brook.gs/3NI3YcG. By allowing workers to be matched to consumers, the "gig" economy has allowed all Americans, of all incomes, to access the goods and services they need.

II. Independent Drivers Should Not Be Treated As Employees.

Petitioners ask the Court to overturn Proposition 22 and restore the pre-existing legal regime, under which employee classification was governed by the so-called "ABC" test. The California Supreme Court adopted that test in *Dynamex Operations, West Inc. v. Superior Court* (2018) 4 Cal.5th 903, 959-60. In Assembly Bill No. 5, as amended by Assembly Bill No. 2257, the Legislature subsequently codified *Dynamex*'s holding (with some modifications). *See* Lab. Code § 2750.3 [repealed], §§ 2775-2787. If Proposition 22 is

overturned, Petitioners and others would doubtless argue that drivers should be classified as employees under that test.

If that outcome materializes, businesses, drivers, and consumers would be harmed. Voters had sound reasons for concluding that drivers should be treated as independent contractors.

A. Deeming "gig" economy drivers to be employees would have major negative impacts on businesses, labor, and the economy.

If overturning Proposition 22 would result in the classification of "gig"-economy businesses as "employers" and drivers as "employees," that outcome would have negative consequences for businesses, drivers, and consumers.

From the businesses' perspective, deeming drivers to be employees would drive up costs and stifle innovation. Technology products like the Lyft app are successful precisely because they do *not* create traditional employer-employee relationships, but instead allow independent drivers and independent consumers to find each other, or allow restaurants, delivery drivers, and consumers to find each other. Such a business model is more attractive to both drivers and consumers than the traditional top-down business model.

Yet Petitioners now ask the Court to overturn Proposition 22, so as to declare app-based drivers to be "employees" of the platforms that those drivers use. Given that many "gig" economy workers use multiple apps, often simultaneously, the result would be that every driver has numerous employers—and every app has enormous numbers of employees. Such a ruling would prevent network

companies from pursuing the new business models that have transformed modern commerce.

Independent drivers in the "gig" economy, too, would be worse off. If network companies are deemed employers of independent drivers, they will be forced to act like employers—to their "employees'" detriment. The high cost of compliance with labor laws and regulations will cause companies to sharply limit the number of people who work using their product, and the employees that remain would lose the flexibility they enjoy as independent contractors. *See Ready, Fire, Aim, supra*, at 37 ("[O]nce platform holders have to guarantee wages and other benefits, they will behave more like traditional employers and be more selective about whom they partner with. They will have to ensure that every new service provider can generate enough revenue to justify his or her wages and benefits, and that will make them more careful about offering work opportunities.").

In particular, if drivers using rideshare or delivery apps are classified as employees and declare all of their time with the app activated to be compensable work time, the network companies might be forced to micromanage when the app is turned on or off. For instance, network companies might prevent the app from being turned on if the drivers are in an area unlikely to get delivery offers, or force drivers to be in high-yield areas at particular times of day. This would eliminate one of the apps' fundamental selling points for drivers—they can turn the app on when they want, where they want. Indeed, one studies suggests that repealing Proposition 22 would cost

hundreds of thousands of drivers their jobs. *Williams Report, supra*, at 1, 6-8.

Consumers would also be hurt if "gig" economy participants were considered employees. If an app is forced to cut the number of drivers working for it, or to prevent drivers from working at low-volume times such as at night, consumers may become unable to obtain the late-night dinner that those apps previously facilitated. At a minimum, the cost of transportation for consumers would surely go up. Further, classifying "gig" economy drivers covered by Proposition 22 as employees would make it more logistically challenging to launch new Internet matching apps, to the detriment of the economy as a whole. Studies have shown that the "economic benefits of independent contracting … are substantial" and that making "it more difficult for workers and firms to enter into such arrangements would thus result in slower economic growth, lower levels of employment and job creation, and lower consumer welfare overall." Jeffrey A. Eisenach, Navigant Economics, *The Role of Independent Contractors in the U.S. Economy* at ii (2010), https://bit.ly/3wQn61D; *see also* Steven Cohen & William B. Eimicke, Colum. Sch. of Int'l Affairs, *Independent Contracting Policy and Management* Analysis 85 (Aug. 2013), https://bit.ly/3MPy91L.

In short, requiring network companies classify independent drivers as employees creates a lose-lose-lose situation that is bad for businesses, workers, and consumers.

B. The policy justifications for classifying workers as "employees" do not extend to rideshare drivers.

The policy justifications for adopting an expansive understanding of "employees" do not apply to the drivers subject to Proposition 22. "Wage and hour statutes and wage orders were adopted in recognition of the fact that individual workers generally possess less bargaining power than a hiring business and that workers' fundamental need to earn income for their families' survival may lead them to accept work for substandard wages or working conditions." *Dynamex*, 4 Cal.5th at 952. Employers' control over employees is the core reason for wage-and-hour statutes. Employees need to put food on the table every week. In many areas of the country, few employers exist, and it is difficult to move. An employee who wants to keep her family where it is has little choice but to accept the local employers' conditions of employment. Even in areas where there are many employers, many employees live paycheck-to-paycheck and are unwilling to quit their jobs based on the speculative possibility of obtaining higher pay elsewhere. The difficulty of finding a new job creates the risk that employees will accept work for substandard wages or working conditions. Wage and hour statutes were designed to protect workers from this type of exploitation.

But that justification does not make sense in the context of rideshare and delivery apps. Concerns about the difficulty of finding a new job simply do not apply in the context of rideshare apps, where any driver may sign up at any time to use as many apps as they want.

A similar analysis applies to overtime and sick pay rules. Overtime rules and sick pay rules protect employees from abusive

employers who force them to work excessive hours or while they are sick. But drivers can use apps whenever they want, for as long as they want. And many drivers and "gig" economy workers use apps to find work only sporadically. Indeed, according to a study by the Federal Reserve, only a third of "gig" economy workers had performed gig work in all or most months in the prior year, and the median amount of hours spent on gig work per month was five. *Ready, Fire, Aim*, supra, at 17. Similarly, according to a study by the New York City Taxi and Limousine Commission, the average taxi driver took 91 trips per week, whereas the average driver using Uber took 44—suggesting that unlike taxi drivers, drivers using Uber were working mostly part time. *Id.* That makes the flexible relationship between drivers and network companies very different from the relationships that form the basis for wage-and-hour laws.

Moreover, drivers have significant control over the amount of money they earn. Drivers largely determine the amount of revenue they take in from apps based on whether, when, where, and for how long they choose to drive. Further, drivers must make substantial out-of-pocket capital investments—and they decide how to manage those investments. The driver decides whether to buy, lease, or rent the vehicle they use, and on what terms (subject to market availability). And the driver chooses how to manage carrying costs, like gasoline, vehicle maintenance and upkeep, and insurance. The ability to turn a greater profit by operating more efficiently is a classic hallmark of an independent contractor. By contrast, wage-and-hour orders are intended to protect employees who *cannot* earn a greater profit by

operating more efficiently, but whose hours and wages are at the discretion of an employer that is able to exploit them.

Workers also benefit from their capital investments even after they stop using the apps. An employee of a trucking company who quits his job cannot take the truck with him. By contrast, a person who buys a car and uses an app can keep the car even after he stops using the app. This decreases drivers' economic dependence on apps and decreases the need for a wage-and-hour law.

This does not mean, of course, that drivers who use apps should be left completely on their own. As such, Proposition 22 includes extensive protections tailored to the needs of those drivers. For instance, drivers, whether employees or independent contractors, need a safety net if they are injured on the job. Proposition 22 preserves such a safety net: it contains detailed provisions guaranteeing that injured drivers will be compensated. *See* Bus. & Prof. Code, § 7455. Far from stripping drivers of all protections, Proposition 22 strikes a balance between offering drivers the protections they need while ensuring they can retain the flexibility associated with independent contractor status.

In sum, Petitioners' effort to adopt a regime in which drivers who use apps are deemed "employees" would harm all stakeholders.

III. The Court Should Not Allow Policy Disagreement With Proposition 22 To Distort Constitutional Analysis.

The Superior Court's constitutional analysis appears to have been influenced by the Superior Court's policy disagreement with Proposition 22. That reasoning was misguided. To the extent public

policy is relevant to the constitutional issues presented here, it is a basis to uphold Proposition 22, not to strike it down.

Limitation on Legislature's "Plenary" Power. The Superior Court held that "Proposition 22's Section 7451 is … an unconstitutional continuing limitation on the Legislature's power to exercise its plenary power to determine what workers must be covered or not covered by the worker's compensation system." AA at 889-90.

The Superior Court's decision appears to reflect an implicit premise that it is better for more workers to be treated as employees for purposes of California's worker's compensation laws, and that the Constitution should be construed with that goal in mind. But app-based drivers have many reasons to prefer being an independent contractor (as opposed to an employee). Network companies forced to provide more expansive workers compensation may be forced to restrict the number of drivers who sign up, demand intrusive personal information as a condition of signing up, restrict drivers to working at particular times or particular locations, or restrict drivers from using other apps. This would eliminate one of the primary benefits of apps to drivers—that they can use whichever apps they want and work whenever they want. The Superior Court had no basis for presuming that an expansion of worker's compensation is an unvarnished good, and allowing that presumption to influence its interpretation of the Constitution.

Separation of powers. Article II of the California Constitution restricts the Legislature's ability to enact amendments to voter initiatives. Article 9(c)(4) of Proposition 22, Cal. Bus. Code, § 7465(c)(4), restricts the legislature from enacting "[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." The Superior Court concluded that this provision violated the separation of powers because it purported "to limit the Legislature's ability to pass future legislation that does not constitute an 'amendment' under Article II." AA at 895. The Superior Court explained that Section 7465(c)(4) restricted the Legislature from "creat[ing] a guild through which independent contractors would bargain collectively their contract terms and working conditions." *Id.* In the Superior Court's view, this hypothetical statute would not constitute an "amendment" to Proposition 22: "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." *Id.*

Appellants argue that the Superior Court should not have invalidated Proposition 22 based on the hypothetical possibility of a statute that the Legislature has never tried to enact. That said, the Superior Court's reasoning fails for the additional reason that it simply reflects a policy disagreement with Proposition 22, rather than a basis for striking it down. The Superior Court evidently believed that collective bargaining would be beneficial to drivers: it would "alter their bargaining power" but would not "diminish their 'independence.'" *Id.* But a core premise of Proposition 22 was that collective bargaining *would* diminish the very independence that Proposition 22 was designed to protect. Collective bargaining

agreements routinely include provisions such as minimum-hour guarantees and seniority protections. Those provisions would wipe out the benefits of apps for many drivers. If a collective bargaining agreement included a minimum-hour guarantee, network companies would be forced to ban drivers who only use the app occasionally. If it included seniority protections, drivers might not be able to use the app in their preferred locations or preferred times—such as on their commute home at the end of the working day. The Superior Court's disagreement with the People's assessment of the impact of collective bargaining was not a permissible basis to find a separation-of-powers violation.

Single-Subject Rule. The Superior Court's policy disagreement with Proposition 22 was most apparent in its application of the single-subject rule. In the Superior Court's view, the bar on legislation authorizing collective bargaining was on a different "subject" from the classification of app-based drivers as independent contractors. The Superior Court reasoned: "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 to protect the economic interests of the network companies in having a divided, ununionized workforce, which is not a stated goal of the legislation." AA at 896.

This reasoning reflects a caricature of Proposition 22: that it was simply a naked transfer of money and power from drivers to network companies. Proposition 22's opponents presented the same

portrait of Proposition 22 during the campaign, but voters were not persuaded. As explained above, collective bargaining agreements may well restrict workers from working where they want, when they want, as much as they want—the core benefit of classifying workers as independent contractors. The Superior Court may have a different policy view of the virtues of collective bargaining agreements than the voters, but that does not mean that collective bargaining agreements address a separate "subject," requiring invalidation of Proposition 22.

CONCLUSION

The judgment of the Superior Court should be reversed.

Dated: June 1, 2022

Respectfully submitted,

/s/ *Laurie J. Edelstein*

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CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court, rule 8.204, the foregoing brief contains 4,238 words, including the footnotes but excluding tables, this certificate, and the signature block, according to the word count generated by the computer program used to product this brief.

Dated: June 1, 2022

/s/ *Laurie J. Edelstein*
Laurie J. Edelstein

PROOF OF SERVICE

I, Tamara Rosado, declare as follows:

I am employed with the law firm of Jenner & Block LLP, whose address is 455 Market Street, Suite 2100, San Francisco, CA 94105. My electronic service address is trosado@jenner.com. I am over the age of eighteen years and not a party to this action. On June 1, 2022, I served the following documents by the method indicated below on the parties listed on the attached service list.

UNOPPOSED APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANTS

[X] (BY ELECTRONIC SERVICE VIA TRUEFILING). I electronically transmitted the document(s) listed above to TRUEFILING, and electronic filing service provided at www.truefiling.com. To my knowledge, the transmission was reported as complete and without error.

[X] (BY FIRST CLASS MAIL). I placed true copies thereof in sealed envelopes, addressed as shown above, for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.

[ ] (BY EXPRESS COURIER). I placed true copies thereof in a sealed FedEx envelope, air bill addressed as shown, for collection and delivery pursuant to the ordinary business practice of this office which is that correspondence for overnight delivery via courier service is collected and deposited with the courier service representative on the same day in the ordinary course of business.

[ ] (BY HAND DELIVERY). I personally arranged for delivery of the documents by hand to the addressee, as noted below, via messenger service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this proof of service was executed on June 1, 2022 at San Francisco, California.

Tamara Rosado

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