



January 21, 2021

Honorable Chief Justice and Associate Justices of the California Supreme Court
 350 McAllister Street
 San Francisco, CA 94102

14156 Magnolia Boulevard, Suite 200
 Sherman Oaks, California 91423

RE: Amicus Curiae Letter in Support of Petition for Review (*Castellanos v. State of California*, Cal. Supreme Ct. No. S266551)

Dear Chief Justice and Associate Justices:

On behalf of the more than 1,200 affiliated unions representing 2.1 million workers, we write to respectfully request the Court grant review of this request to decide whether Proposition 22 is invalid and unenforceable.

As you know, Proposition 22 defines “App-Based Drivers” as independent contractors rather than as employees, and thereby withdraws basic employment protections from them, including workers’ compensation coverage. Proposition 22 also goes further than that, precluding the Legislature from passing various types of legislation not directly related to the employee vs. independent contractor distinction.

It is vital that the Supreme Court resolve this case quickly; not only are the rights of hundreds of thousands of drivers to access workers' compensation and other provisions of California law up in the air, but also we need to reaffirm the Legislature's role in amending relevant statutes. A recent Court of Appeal decision (*Vazquez v. Jan-Pro Franchising International, Inc.*, No. 17-16096) affirmed a preliminary injunction requiring Uber and Lyft to reclassify its drivers as employees in late 2019. Drivers need to know whether they are entitled to the protections of California's labor and employment laws -- and, if so, they should receive those protections -- or whether they are subject to Proposition 22.

In addition, the Legislature needs to know the status of Proposition 22. Protection of gig workers, particularly drivers, has been a major focus of the California Legislature over the past two years. Proposition 22 imposes a virtually impossible 7/8 supermajority requirement for any amendment to its provisions, including amendments that address subjects that Proposition 22 does not even address in any substantive manner. The Legislature will be reluctant to expend resources considering legislation that may be deemed invalid if not enacted by a 7/8 supermajority.

Of particular concern is Proposition 22's impermissible elimination of the Legislature's constitutional authority over a system of workers' compensation for gig workers. The need for the court to preserve this legislative authority to protect gig worker safety from a global pandemic cannot be overstated. This power was used successfully in passing SB 1159 (Chapter 85, Statutes of 2020) and AB 685 (Chapter 84, Statutes of 2020) which added needed worker protections and outbreak disclosures in direct response to COVID-19. Because Proposition 22 expressly provides that, if any application of the provision requiring that certain drivers be treated as independent contractors is held invalid then the entire measure must be struck down, the invalidity of Proposition 22 in relation to workers' compensation dooms the entire measure.

Additionally, we believe Proposition 22 violates the State Constitution by stating that any authorization of collective representation of drivers, as well as any laws that treat gig worker drivers differently from other drivers, constitute amendments of the measure that must be adopted by a 7/8 vote even though the ballot measure does not contain any substantive provisions addressing those subjects. We believe this violates the Constitution in two ways: (1) it violates the separation of powers by invading the province of the judicial branch to decide what constitutes an "amendment" to a ballot measure, and (2) it exceeds the proper scope of a statutory initiative by foreclosing the Legislature from acting in an arena that the ballot measure does not substantively address.

And finally, we believe Proposition 22 violates the single subject rule, and so must be invalidated in total, because the anti-collective bargaining provision does not relate to the stated purposes of the initiative and was not made known to the voters.

For these reasons, the validity of Proposition 22 should be resolved quickly and at the highest authoritative level. We believe the Court should order a response and decide the merits of this challenge on an expedited basis, as it did in *Bramberg v. Jones*, 20 Cal.4th 1045 (1999) (granting writ of mandate prohibiting enforcement of Proposition 225, which imposed Congressional term limits), *Legislature v. Eu*, 54 Cal.3d 492 (1991) (in original writ proceeding, upholding in part and invalidating in part Proposition 140, which imposed term and compensation limits upon state

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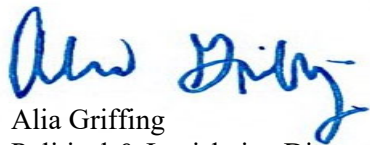
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legislators), and *Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989) (in original writ proceeding, upholding in part and invalidating in part Proposition 103, which regulated insurance rates).

Sincerely,



Art Pulaski
Executive Secretary Treasurer, California Labor Federation



Alia Griffing
Political & Legislative Director, American Federation of State, County & Municipal Employees of California



Nancy Brasmer
President, California Alliance for Retired Americans



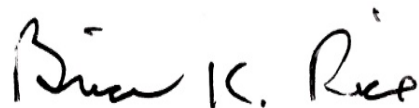
Art Aguillar
Chairman, California Conference Board of the Amalgamated Transit Union



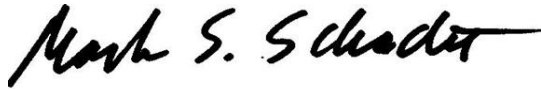
Thomas J. Brandon
Secretary-Treasurer, California Conference of Machinists



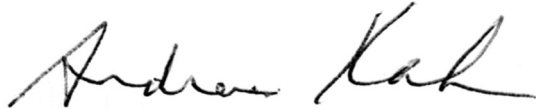
Jeff Freitas
President, California Federation of Teachers



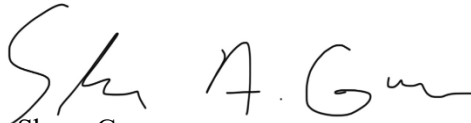
Brian K. Rice
President, California Professional Firefighters



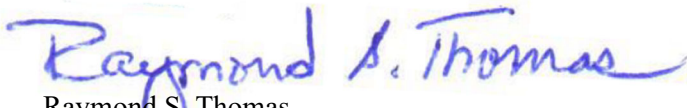
Mark Schacht
Deputy Director, California Rural Legal Assistance Foundation



Andrew Kahn
Chief Counsel, California School Employees Association
Cal. Bar # 129776



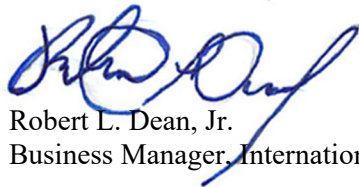
Shane Gusman
Director, California Teamsters Public Affairs Council



Raymond S. Thomas
President, Five Counties Central Labor Council



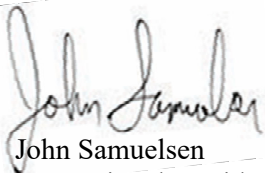
Gary R. Allen
General Vice President, International Association of Machinists & Aerospace Workers



Robert L. Dean, Jr.
Business Manager, International Brotherhood of Electrical Workers, Local Union 1245



Lee Sandahl
Legislative Advocate, Northern California District Council of the International Longshore & Warehouse Union



John Samuelson
International President, Transport Workers Union of America

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David Parsons

President, United Auto Workers Western States

A handwritten signature in black ink, appearing to read "David A. Goodman". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

David A. Goodman

President, Writers Guild of America West