

Prop 22 Has Passed - What's Next?

(Andy Liu, Mudd '23)

Despite opposition from organized labor groups, the most expensive ballot measure in California history won by a comfortable margin last Tuesday, with voters [approving Prop 22](#) by a 58-42 margin. Prop 22 classified rideshare and delivery drivers as contractors rather than employees. This exempted corporations such as Uber, Lyft, and DoorDash, who spent over [two hundred million dollars](#) on the proposition, from classifying their drivers as employees (and thus denying the drivers certain benefits). While the fight over Prop 22 may be over, this ballot measure is just the first battle in what could be a [global dispute](#) over the labor rights of app-based drivers.

Prop 22 marked a response to the September 2019 [AB5 bill](#), colloquially known as the “gig worker bill”, which required many corporations that hire independent contractors to reclassify them as employees. This would give such workers guaranteed access to crucial [benefits](#) contractors are not necessarily given, such as minimum wage and overtime protections, paid sick days, workers' compensation benefits, and unemployment insurance. To determine whether a company would have to reclassify its workers, AB5 solidified what's known as the “[ABC Test](#).” First established in a [2018 California Supreme Court ruling](#), this test allows for classification as an independent contractor only if [three tests](#) are met. The worker must be free from the control and direction of the hiring entity in connection with performance, perform work outside the usual course of the hiring entity's business, and be engaged in an independently established trade of the same nature as their work. This summer, after a legal challenge from California Attorney General Xavier Becerra and the city attorneys of Los Angeles, San Francisco, and San Diego, it was [ruled](#) that Uber and Lyft must reclassify their drivers under AB5, as drivers' work was considered within the usual course of the business (thus failing the ABC Test), in contrast to the corporations' claims.

To ridesharing and delivery apps, AB5 represented what they claimed was an existential threat to their ability to operate in California. Companies like Uber and Lyft warned of dramatic price hikes, longer waiting times, and even [complete withdrawal](#) from California altogether if they had to comply with the new law. They claimed that Prop 22's [limited benefits and wage floors](#) (most notably 120% of the minimum wage, albeit only when actually driving, which a [recent study](#) found would equate to below-minimum wage pay), as well as the flexibility associated with remaining contractors, was what the [majority of drivers preferred](#). These corporations launched a protracted, 200-million-dollar campaign backing Prop 22,

which would effectively solidify a “third way” of classification (besides contractor and employee) for app-based drivers while requiring a [seven-eighths majority](#) in both chambers to ever amend, as a response.

As the smoke clears from Election Day, app-based driving corporations such as Uber and DoorDash have already declared their intention to expand the Prop 22 model across the country. In the spring, Uber [appealed](#) to President Trump for federal legislation that would definitively classify its drivers as independent contractors. And even before Prop 22 passed, Uber had already begun planning similar campaigns in other states. Under the relatively business-friendly Trump administration, Uber did make progress at the federal level – the Department of Labor [clarified](#) in 2019 that app-based gig workers were considered contractors at the federal level, and a federal judge recently [ruled](#) that under the Fair Standard Act, considered less stringent than AB5, Uber drivers were not considered employees.

However, corporations such as Uber are still relatively susceptible to state and federal legislation alike that challenge them similarly to AB5. In September, Democratic Senators Patty Murray and Sherrod Brown [introduced a new bill](#), the Worker Flexibility and Small Business Protection Act, that would expand protections for independent contractors. Meanwhile, at the state level, New York Governor Andrew Cuomo is considering [an AB5-esque bill](#) that would also give gig workers the right to unionize to bargain for greater wages and benefits. However, unlike AB5, New York’s new bill would not be constrained by past state Court rulings, which could result in a bill that is more secure from ballot measures or legal challenges.

As a result, while the status quo benefits these companies, as they currently do not have to give workers the benefits of full-time status or a Prop 22-esque “third way”, they remain threatened by future legislation. However, with many corporations that rely on gig workers [still yet to turn a profit](#), the increased costs connected with complying with AB5 or its equivalents in other states would still represent a major threat to business in those states. Additionally, while it is unclear whether bills like the Worker Flexibility and Small Business Protection Act can pass in a Senate that will be, for Democrats, split 50-50 at best, labor groups have been buoyed by a future Biden administration’s Department of Labor, whose specific appointments (and how progressive they are) could shape federal policy surrounding the issue. And while California has ultimately proven a victorious battlefield for these corporations, the cost of the Prop 22 campaign means lobbying for more states to implement

Uber's "third way" approach, as well as negotiations with labor and political groups, is a more cost-effective option.

The future of the gig worker economy therefore likely lies in the statehouse and the courtroom rather than at the ballot box. However, if labor groups and progressive politics are successful in securing initial legislative victories, and corporations must return to ballot measures and legal action, they could have another tool that Prop 22 shone a light on - their own apps and organizations. In addition to spending significant amounts of money on a statewide ad campaign, the corporations behind Prop 22 used their own apps to garner support at the ballot box. With a large proportion of Californians [remained undecided](#) on Prop 22 in the run up to election day, these corporations' apps gave them an incredibly large audience through which they could define the conversation around Prop 22. As any Californian knows, they did just that, [bombarding users with notifications](#) to garner support. While drivers filed a lawsuit against Uber for their usage of these notifications, which many nonprofits described as "political coercion", a [San Francisco Superior Court judge denied](#) an injunction to stop these advertisements on First Amendment grounds, empowering corporations to pursue similar tactics in the future. Labor groups have also highlighted [accusations made](#) by former Uber engineers, who alleged that Uber's decision to make Prop 22 support a company-wide initiative, and tactics such as free pro-Prop 22 merchandise giveaways, Prop 22 backgrounds on Zoom calls, and company-wide initiatives for employees to convince family and friends, made them feel pressured to support Prop 22. As a result, the organization provided by employees and the captive audience provided by apps put the debate over Prop 22 solidly on these corporations' home turf, an advantage that could easily be sustained in future campaigns.

The ultimate success of this "Third Way" strategy that major corporations seem intent on pursuing is unclear. While it has so far been successful at the federal and state level, changes in administration, as well as the potential for new, more successful state legislation unencumbered by existing state court cases, could threaten or alter these plans. The story of large businesses resisting attempts at government intervention is a common one, especially in [California ballot measures](#). However, the corporations behind Prop 22's willingness to spend unprecedented amounts to avoid treating their drivers as employees, as well as their leveraging of their own apps and organizations to appeal to voters, make this particular labor dispute one to watch in future years.