

A supporter of ride-hail drivers holds a sign during a protest in front of Uber headquarters in May 2019. Prop. 22, backed by huge amounts of cash from gig companies, would create a new class of worker in California. (Justin Sullivan/Getty Images)

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**NEWS**

# Prop. 22 Explained: Why Gig Companies Are Spending

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*This story was updated Wednesday, Nov. 4 at 12:40pm*

**UPDATE: Proposition 22 was approved by California voters Tuesday, Nov. 4.**  
**3. Read the full details here.**

*Original story:*

The decision California voters face on Proposition 22 boils down to this: should a handful of companies be allowed to create a new gig contractor category for their workers that doesn't include employee protections and benefits, like unemployment insurance and workers compensation? Or should companies like Uber, Lyft and DoorDash have to follow state labor law and classify their drivers as employees, which could mean directing more revenue to workers, higher prices for consumers and increased requirements for more casual drivers?

That's the choice on the ballot. But there's so much more going on with this unprecedented and far-reaching proposition — a proposition that recent polling indicates will come down to Californians who are still undecided. As of Oct. 26, [polling of likely voters](#) shows 46% in favor, 42% opposed and 12% undecided. Here's everything you'd need to know about the proposition and its backstory before you vote.

**Skip to:**

- **The Backstory:** How companies like Lyft, Uber and DoorDash have avoided employee classification for eight years despite pressure from workers, labor groups and every branch of state government
- **What's Actually in Prop. 22?:** An explanation of the limited worker benefits and why the "7/8ths provision" would make it nearly impossible to change this law in the future
- **Unprecedented Money:** Gig companies are spending record amounts of cash to market Prop. 22 — and it's being framed as a social justice issue
- **Those Driver Surveys, and What's Wrong With Them:** What do drivers want? Surveys used to market Prop. 22 are often flawed and don't tell the full story
- **Unprecedented Direct-to-Voter Connection:** Millions of apps in millions of

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# The Backstory

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A Lyft driver with one of the early fuzzy pink mustaches drives in downtown San Francisco in January, 2014. (*Justin Sullivan/Getty Images*)

It all began in 2012 with a fuzzy pink mustache and a fist bump. It was Lyft, not Uber, that first started paying drivers to use their own cars to do taxi work. Both companies cast themselves not as taxi companies, but platforms to connect riders to drivers, and tech journalists helped propel this image. [Here's the even deeper backstory on how that all went down.](#)

Using the platform argument, the gig companies classified their workers as contractors, which shielded them from liability and allowed them to avoid paying for protections like overtime and unemployment insurance. Regulators and the government at the state and federal levels did not stop Uber and Lyft, and soon, companies like Instacart, DoorDash and Postmates began following suit.

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## ELECTION 2020

### ➡ KQED's California Voter Guide

It was arguable that under those parameters, gig workers were not independent entrepreneurs running their own businesses on a platform provided by "tech" companies, but instead, employees of a transportation company in the case of Uber and Lyft, a service company in the case of TaskRabbit and a delivery company in the case of Postmates or DoorDash. **Lawyers began trying to make the case** with big lawsuits against gig companies.

Workers were and still are fighting almost all the battles over employee protections and benefits behind closed doors. That's because gig companies make workers sign arbitration clauses, which prevent them from taking any grievance to court. That has helped preempt and

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kept low by the contractor model and venture capital. It took six years for any notable action from California's government. And it came first from the judicial branch.

In a ruling on a case known as **Dynamex in 2018**, California's Supreme Court simplified the Borello test, boiling it down to just three factors, called the ABCs. A worker could now only be classified as a contractor if they:

- A) Were free from the control and direction of the hirer
- B) Performed work outside the hirer's normal course of business
- C) Had their own independently established trade, occupation or business

The ruling made it much more difficult for gig companies to deny workers employee benefits and protections. But still, gig companies kept classifying workers as contractors.

After the state Supreme Court, the Legislature took up the fight. Lawmakers passed **Assembly Bill 5**, which went into effect on Jan. 1, 2020. AB 5 codified the Dynamex ruling and was designed with gig companies in mind.

However, the new law also affected a number of other industries that have come to rely on contractors. The bill was amended after a backlash, and a number of professions got exemptions, like fine artists, foresters and translators — but not gig workers. Still, gig companies kept classifying workers as contractors.

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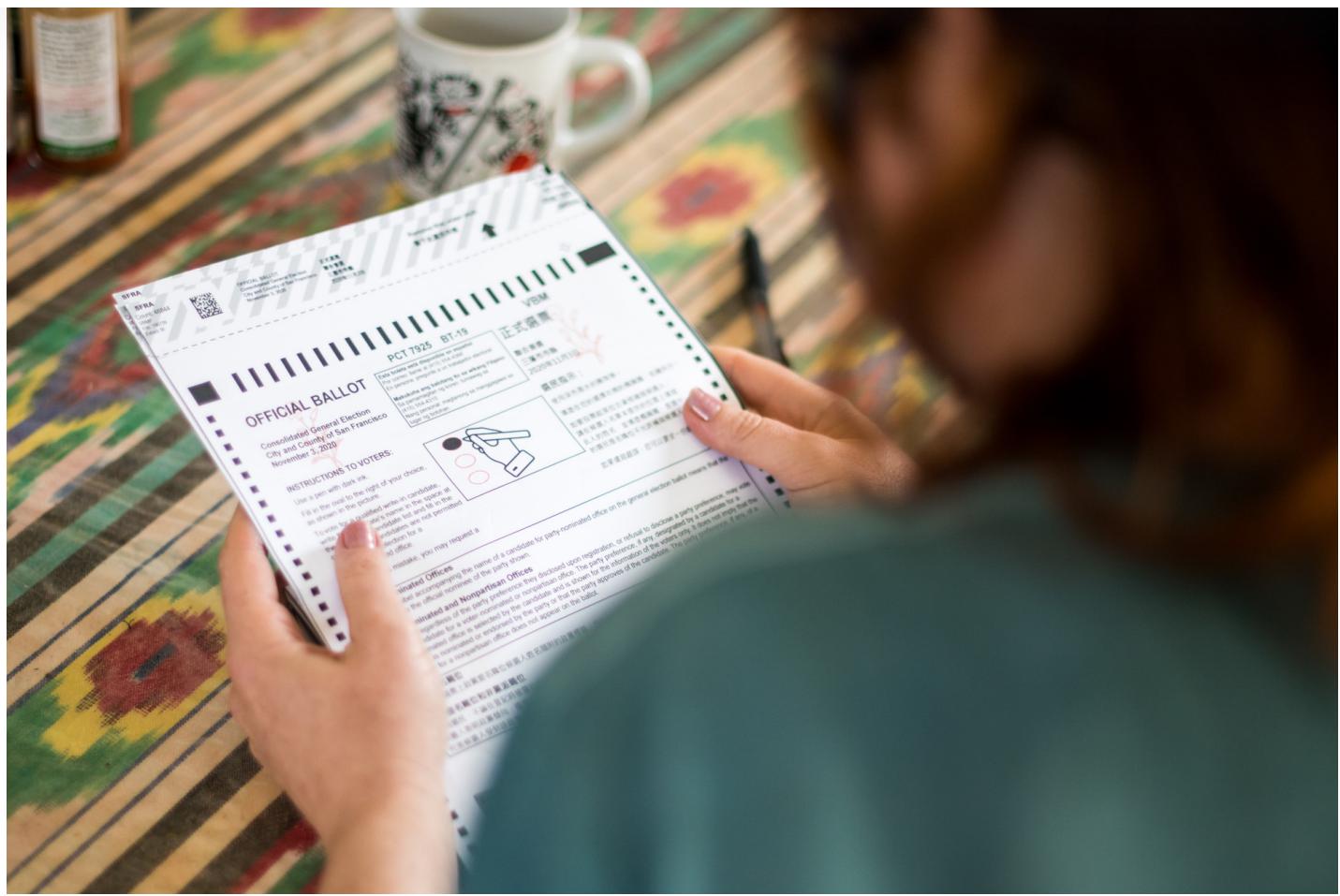


➡ **For Over Eight Years, Uber and Lyft Have Denied Drivers Employee Protections. Here's How They Did It**

Then in May, several months into the coronavirus pandemic, with tens of thousands of Uber and Lyft drivers seeking unemployment funds that didn't exist because the companies had never paid into the state unemployment fund, the executive branch got involved. California Attorney General Xavier Becerra, along with a handful of city attorneys, **sued Uber and Lyft for misclassifying workers**. On Oct. 22 Uber and Lyft **lost an appeal**, and will have to start classifying workers as employees in 30 days — unless Proposition 22 passes.

After AB 5 passed, the gig companies started their ballot initiative campaign, hoping that voters would enshrine their gig contractor model into law. Now, with all three branches of California's government pressuring them to classify workers as employees, they are pouring money into Proposition 22. It's become **the most well-funded ballot initiative in California**.

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A San Francisco resident fills out their mail-in ballot on Oct. 6, 2020. (Beth LaBerge/KQED)

Proposition 22 is written as an exemption from AB 5 for any company that provides transportation or delivery services through an app. It would enshrine in law a kind of third employment category: the contract gig worker. This has been a goal of gig companies for years. They have pursued it at the federal level, and have already **had success in getting legislation on the books in a number of states.**

But the measure has several other provisions built around the central premise of exempting gig companies from AB 5.

## Limited Employee Benefits

Prop. 22 would guarantee gig workers some limited benefits and protections. As contractors, **they currently have none. But the benefits are not as straightforward as they appear at first**

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Much of gig work is spent waiting for a job in the app. UC Berkeley's Labor Center did a study where they tried to take time between rides into account, along with wear and tear on the vehicle. Adding those factors in the mix, the study found the wage guarantee drops to just \$5.64 an hour, a drastic pay cut from the \$13 minimum wage they would be guaranteed as employees in California. Uber and Lyft disputed the findings in the study, and they commissioned another study that put the earnings at between \$25 and \$27 an hour. That prompted a rebuttal from UC Berkeley.

Aside from the wage floor, Prop. 22 includes a number of benefits that are substitutes for protections guaranteed by traditional employment. In each case, these protections are weaker than what workers would get as employees, and some are contingent on driving a certain number of hours.

Instead of health care, drivers who put in over 25 hours per week of engaged driving time would get health care subsidies. Instead of workers compensation, companies would offer occupational accident insurance for medical expenses, lost income and disability. Companies would also offer accidental death insurance. It is not clear if these insurance plans would be given to workers automatically, or if they would only be guaranteed the opportunity to purchase them.



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A ride-hail driver in Oakland In March, 2020. Prop. 22 would guarantee gig workers some limited benefits and protections. As contractors, they currently have none. (Beth LaBerge/KQED)

Prop. 22 also includes provisions to address long-term accountability issues in the gig industry, like discrimination, sexual misconduct, a lack of background checks and drivers working more than 12 hours a day. Gig companies would be required to create anti-discrimination and sexual harassment policies, develop training programs for drivers and require criminal background checks — all things that the companies have been criticized for lacking in the past.

Many of the issues these final provisions would address are things that are exacerbated by the contractor status of workers. If these workers were actually employees, gig companies would be far more liable for things like car accidents, sexual misconduct and criminal activity.

## Prop. 22 Would Be Nearly Impossible to Change

If Proposition 22 passes, it would prevent local governments from passing laws that require companies to provide additional benefits and protections for gig workers not included in Prop. 22. It would also be the hardest statute for the Legislature to alter, aside from a handful of propositions that bar any amendment whatsoever. That's because of the 7/8ths provision.

A single sentence on page 18 of the initiative requires a 7/8ths vote of both the state Assembly and Senate in order to amend Prop. 22 in any way. **This particular requirement is unprecedented.** Some propositions have required 2/3rds or 3/5s — but never 7/8ths.

If it passes, Prop. 22 would be harder to amend than the state's Wildlife Protection Act, the Clean Air and Transportation Improvement Act or the Cruelty to Farm Animals Act. Amending it would take eight more votes than are needed to override a governor's veto or revise the state Constitution, according to data provided to KQED by Alex Vassar, communications manager at the California State Library.

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### ELECTION 2020 RESOURCES

#### How to Make Sure Your Mail-In Ballot Isn't Rejected in California

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## I Made a Mistake on my Ballot. How Do I Fix It?

### How to Find Your Early Voting Site or Ballot Drop-Off Location

In California, a proposition can only be undone by another ballot initiative. So why is the threshold for amendment so high on Prop. 22? Part of the reason is that a section of the proposition's stated purpose is contradictory to the wishes of gig companies.

Proposition 22 states that it would "require rideshare and delivery network companies to offer new protections and benefits for app-based rideshare and delivery drivers." That might sound good to voters who want more protections for workers, but it could cause problems for gig companies. The Legislature could, for example, alter Prop. 22 once it becomes statute or pass new laws to increase benefits for workers beyond what gig companies want. The 7/8ths provision presents a very high barrier to that.

Prop. 22 would also stop local governments from requiring gig companies to increase benefits and protections to gig workers.

"Proposition 22 lops off the top by cutting off the state Legislature's ability to amend the law, and it lops off the bottom [by] preventing local governments from ever modifying its requirements," said Rey Fuentes, a fellow at The Partnership for Working Families, an advocacy group for workers.

Cities in California are often where laws that grant the most rigorous worker benefits and

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Yes on Prop. 22 Spokesperson Geoff Vetter said the issue is consistency for workers who cross city and county lines.

"Given the cross-jurisdictional nature of the service," Vetter said, "it would be impossible to allow all 58 counties and 480+ cities to establish separate requirements. Prop. 22 establishes uniform statewide standards for app-based driver scheduling, benefits."

## Unprecedented Money



Uber and Lyft have spent nearly \$100 million combined in support of Prop. 22. (ROBYN BECK/AFP via Getty Images)

Proposition 22 is on track to become the most well-funded ballot initiative in California history.

~~It has already drawn about \$900 million, most of it on the pro side. As of 10 days before the~~

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That money is not just being spent on TV and digital advertising. The Yes on Prop. 22 campaign has also contributed to political parties, including \$2 million to the California Republican Party. It has spent millions hiring consultants, lobbyists and PR firms like MB Public Affairs, which is known for working with tobacco companies. These firms have launched personal and **intrusive attacks on academics like Veena Dubal**, a UC Hastings law professor who has been critical of gig companies and Proposition 22.

The Yes on Prop. 22 campaign has also sent money to newsrooms in return for digital advertising. By the middle of September, it had sent almost \$48,000 to the Sacramento Bee, \$13,500 to the San Diego Union Tribune and a little over \$36,000 to the San Francisco Chronicle. Both the Tribune and the Chronicle endorsed the measure, but in their endorsements made no mention of the ad revenue they had received.

## Marketing Prop. 22 as a Social Justice Measure

Many workers in the gig economy in California are people of color – a fact reflected in the advertising campaign for Prop. 22, which presents the initiative as a boon for social justice. In the past, **Lyft had leaned heavily on social justice messaging** to appeal to liberals and distinguish itself from Uber, especially after Trump was elected. Now, this tactic has become a major thrust of the entire Yes on Prop. 22 campaign.

**'You have very clearly crossed the line when you try to claim the equity mantle for a campaign that has always been about allowing multi-billion-dollar app companies to write their own law so they can keep exploiting drivers.'**

—Rep Barbara Lee

PR firms working for the campaign **have created a number of political mailers** that urge people to vote yes on Prop. 22 and are designed to look like voter guides coming from progressive sources. In small letters at the bottom of these mailers it says the guides are prepared by organizations like "Feel the Bern, Progressive Voter Guide," "Council of Concerned Women Voters Guide" and "Our Voice, Latino Voter Guide," which are all fake progressive organizations. They don't actually exist. After these mailers were reported, Bernie Sanders **came out publicly against** Proposition 22.

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LyftUp | Maya Angelou | Good Morn...



The Lyft ad begins with a voiceover of Angelou saying “Lift up your eyes upon / This day breaking for you.” You see Black and brown people getting ready for work. And then it transitions to the inside of a Lyft. There’s a montage of drivers, all people of color, picking up passengers. “Each new hour holds new chances / For a new beginning.” Angelou says “Do not be wedded forever / To fear, yoked eternally / To brutishness.”

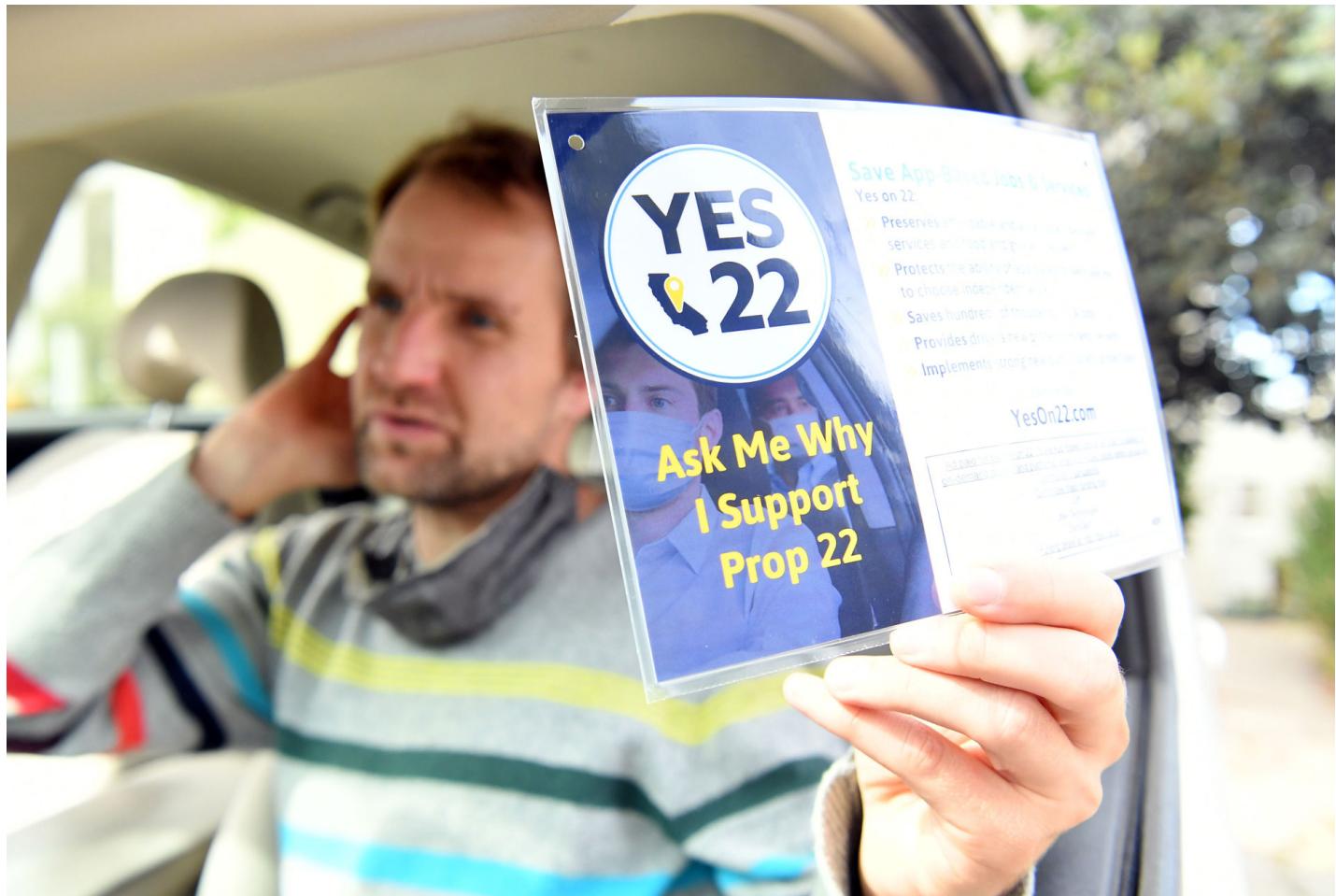
Getting the California NAACP to endorse Proposition 22 was a big win for gig companies. The organization has authored voter guides telling people to vote yes, and Alice Huffman, head of the California NAACP, has been writing editorials in support of the proposition. Huffman also happens to run a consulting firm called AC Public Affairs. That firm has so far received \$85,000 from the Yes on Prop. 22 Campaign. Huffman has a history of receiving contributions from corporations to support their ballot initiatives. The Yes on Prop. 22 money **is part of \$1.2 million her firm has already received this year.**

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Addressing the gig companies on the call, Lee said, "You have very clearly crossed the line when you try to claim the equity mantle for a campaign that has always been about allowing multi-billion-dollar app companies to write their own law so they can keep exploiting the drivers."

In response, Vetter said "Prop. 22 not only protects the jobs of drivers of color and their freedom to work independently, it would provide drivers an earnings guarantee, access to benefits like health care and provide drivers and passengers alike with new safety protections."

## Those Driver Surveys, and What's Wrong With Them



Uber driver Sergei Fyodorov, in Oakland, holds a flyer suggesting his riders ask him about why he supports Proposition 22. (JOSH EDELSON/AFP via Getty Images)

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While the Harry the Rideshare Guy survey has been a central piece of advertising for Proposition 22 and used in legal arguments, it is a non-scientific, informal poll done on a blog. There was no guarantee that respondents were drivers, let alone that there was a representative sample in terms of demographics, hours driven or political leanings.

Harry Campbell, CEO of The Rideshare Guy blog, said he believes the site's survey reflects what he has been hearing from drivers. Yes on Prop. 22 campaign spokesperson Geoff Vetter agreed.

"The Rideshare Guy polled app-based drivers in California and did it without offering payment to the respondents," Vetter said. "All this makes for a much fuller, more accurate data set and one that correctly demonstrates how drivers feel about Prop. 22 and independent contractor v. employee status."

But The Rideshare Guy survey is indicative of a number of the broader issues that the No on Prop. 22 campaign and scholars studying the gig economy have with how drivers are being surveyed. Juliet Schor, a professor of sociology at Boston College who has spent years studying the gig economy, said these surveys don't capture the full picture. There is often bias in the sample, flawed and misleading questions and information presented that influences responses.

Survey respondents were shown the following description of  
the ballot measure from a TechCrunch article:

"Funded by Uber, Lyft and DoorDash — the measure aims to ensure drivers and couriers can continue to be independent contractors with flexible work hours.

The ballot measure looks to implement an earnings guarantee of at least 120% of minimum wage while on the job, 30 cents per mile for expenses, a healthcare stipend, occupational accident insurance for on-the-job injuries, protection against discrimination and sexual harassment and automobile accident and liability insurance.

This initiative is a direct response to the legalization of AB-5, the gig worker bill that will make it harder for the likes of Uber, Lyft, DoorDash and other gig economy companies to classify their workers as 1099 independent contractors."

- [TechCrunch](#), October 2019

Drivers got this prompt before being asked if they supported Proposition 22.  
(Edelson Survey Screenshot)

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misleading. Employees can have autonomy and freedom, and likewise contractors can be constrained and coerced.

Finally, there is the sample issue. The surveys give equal weight to those who drive only a few hours a week with those who drive much more. And the surveys only poll active workers, which could have a distorting effect on the results. There have been tens or even hundreds of thousands of people in California who have done some work for these gig companies and then stopped. These workers represent a large percentage of the labor that has been done for these companies, yet their opinions are being left out.

"It's a big methodological weakness of the surveys," Schor said.

Schor and her research team have interviewed hundreds of gig workers over the years, ethnographic data that can capture what a survey doesn't. She says there is actually a lot of consistency in what drivers want. They want to be autonomous and have flexibility, but they also want to earn enough that they can pay their bills, buy insurance, and have money set aside if something goes wrong. Schor said she thinks a lot of gig workers in California are answering surveys with what they wish they could have: independent status and enough money to truly be their own bosses. [Veena Dubal wrote an entire academic paper unpacking all of this.](#)

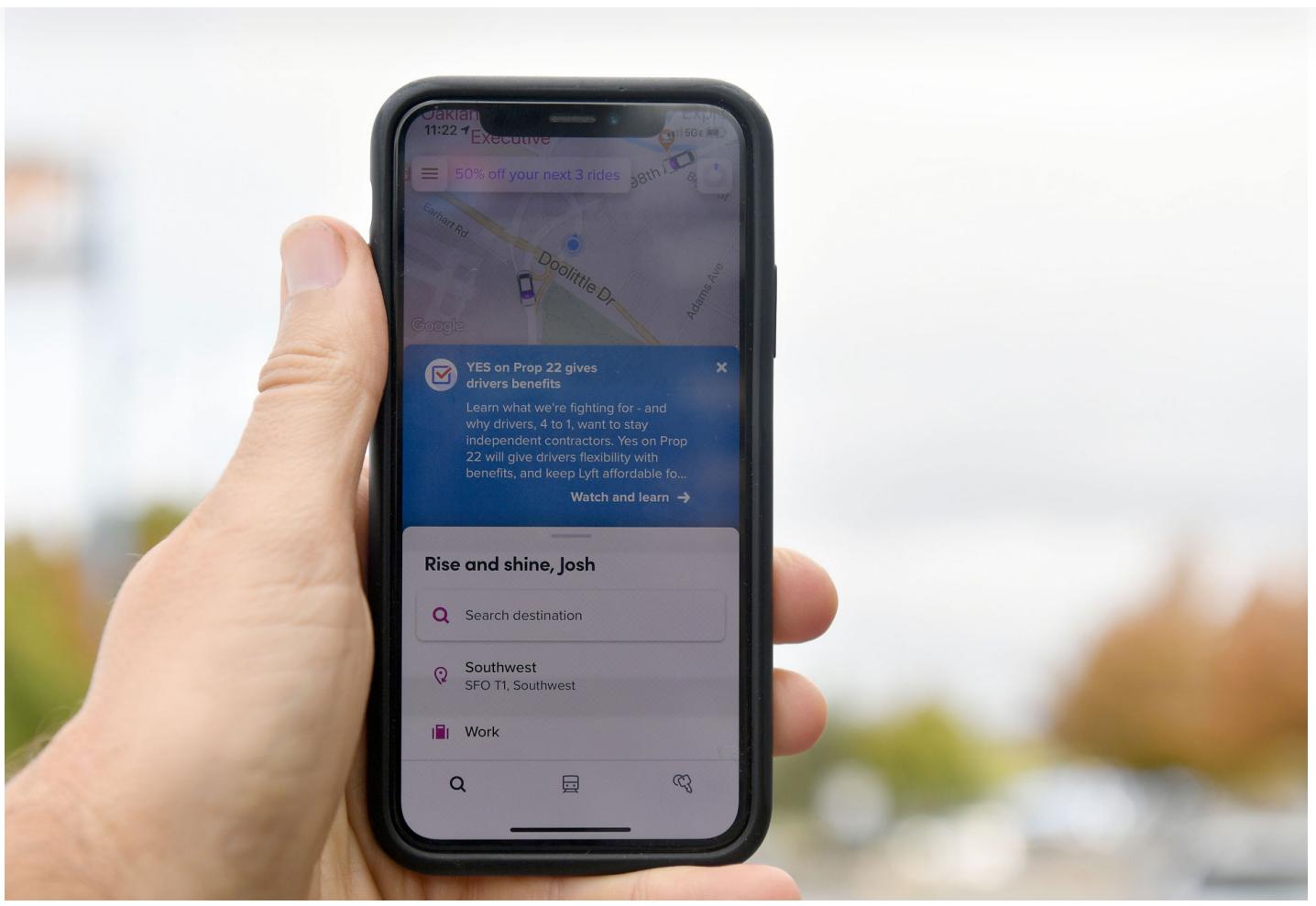
Driver Noemi Torres agreed with Schor's conclusions.

"We want to be independent contractors, but Uber doesn't treat us like independent contractors," said Torres, who has been driving for seven years outside of North Hollywood. "Initially, we would get paid enough to support ourselves in terms of getting our own health insurance, but since they keep lowering the rates, you don't have the flexibility." She opposes Proposition 22.

Drivers who support Proposition 22 often don't sound that different when it comes to what they want. They just believe the ballot proposition can get it for them.

"I decided to vote yes on Prop. 22, because it would allow me and my fellow drivers to retain the flexibility we need while ensuring we get the benefits and protections we deserve," said

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A Lyft app displays a message asking users to vote yes on Proposition 22. (JOSH EDELSON/AFP via Getty Images)

Last month, Hector Castellanos started seeing the pop-ups while driving for Uber. Under a dialog box emblazoned with “Prop. 22 is progress,” Castellanos had to click either “Yes on Prop. 22” or “OK” to proceed with his ride. At the same time, his riders were getting pop ups that said their drivers support Prop. 22 and that they should talk with them about it.

Castellanos drives full-time, and throughout the day kept seeing the pop up again and again. Castellanos opposes Proposition 22 and he didn’t want to have to click yes or OK, but he had no option. “Drivers have to click ‘yes’ even if they don’t want it,” he said. “They have to click yes or OK.”

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### ➡ Gig Companies Are Making Their Workers Promote Prop. 22

Uber spokesperson Davis White said Castellanos's experience is not the norm, and that drivers should only see the pop up once when signing off the app, and that the pop up has been changed so drivers can just close it without selecting an answer. **Castellanos and another driver are now suing** Uber for allegedly infringing on their right to be free of political coercion at work.

Uber's popups are an example of the unprecedented advantage gig companies have in this ballot campaign: their own apps.

With their apps already used by millions of California workers and consumers, proponents of ~~no other ballot proposition have ever had direct-to-voter connection at this scale — and give~~

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**—David McCuan, Sonoma State University**

Lyft and Uber have been particularly aggressive in using apps to market Prop. 22 to customers. In the Uber app, riders will see a little blue text bubble coming out of the car image that says “Yes on 22.” Uber is sending push notifications that pop up on phones saying things like “Vote early on Prop. 22. Support drivers and help keep Uber in your city.”

Other **gig companies are also pressuring their workers** to spread pro-Prop. 22 messages to consumers. In October, Instacart asked workers through the app to put pro-Prop. 22 stickers in customers' orders at a Bay Area store. The sticker said “Yes 22, Save App-Based Jobs and Services.” DoorDash is providing free delivery bags to restaurants that have Prop. 22 ads on their sides. Then workers have to use these bags to bring food to customers.

After backlash online, Instacart is no longer asking workers to add stickers to orders. But DoorDash is continuing to send pro-Prop. 22 delivery bags to restaurants. The company says restaurants have requested over 4 million bags.

This widespread use of apps to spread messages is unprecedented in a proposition campaign, and it could prove to be a powerful tactic that other corporations want to emulate.

“It is the holy grail of political communication,” said David McCuan, professor of political science at Sonoma State University who has been studying ballot propositions for decades.

If the gig companies are successful in getting Prop. 22 passed, McCuan said it could change the way ballot initiatives are fought in California. Companies with apps and money to leverage them may see ballot initiatives as a worthwhile way to get their policies enacted if this campaign shows that apps can be used to sway voters.

## The Ramifications

If Proposition 22 fails, gig companies would have to reclassify workers as employees. That could mean redirecting more revenue to pay for basic employee protections, increasing fares and increased requirements to work on these apps, especially for more casual, part-time drivers.

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Uber has said prices **could double in small cities**. The Yes on Prop. 22 campaign has suggested that 80% to 90% of drivers could lose work. Given the lack of data from gig companies, it is hard to know how much each would have to change their prices or operations. Also Uber and Lyft are still not profitable, so some change is bound to happen to their services regardless of what happens with Proposition 22.

Gig companies have also said they could leave California temporarily. In the past, Uber and Lyft have left places like Austin in order to urge lawmakers to overturn regulations they didn't like. The companies have always come back, and they've never pulled out of a market as big as California. **Bradley Tusk is a former political advisor to Uber, and he assumes** gig companies would use their billions of dollars to continue appealing to the Legislature and to voters to find a way to maintain their gig contractor model if Prop. 22 fails.

If Proposition 22 passes, California would have a third category of worker — the gig contractor — enshrined in law.

Gig companies like Uber, Lyft, DoorDash, Postmates and Instacart would get a carve out from state labor law and would be allowed to classify workers as gig contractors, thereby denying them basic employee benefits. The door would be open for other companies to develop apps to take advantage of this new gig worker category.

The measure would become the **hardest statute to amend** in California history, and local governments would have no power to enact laws that provide gig workers with additional benefits.

It would **establish a playbook** for other companies that want to use an app to market a ballot initiative.

A handful of companies will have proven that they can use a ballot initiative to maintain a business practice that has been deemed illegal either directly or indirectly by all three branches of California's government.

There would certainly be lawsuits over things like the 7/8ths provision, but barring a new

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