This Election, California's Proposition 22 Puts the Future of Labor on the Ballot

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Body

As Californians return their mail-in ballots, some of Silicon Valley's largest tech companies have bombarded voters' social media accounts, text messages and TV stations with a simple message: vote "yes" on Proposition ***22***.

The ballot initiative, written by a consortium of app-based companies, has ignited a nationwide debate on the future of work. If passed, the proposition would enshrine tech companies' ability to classify their workers as independent contractors. If struck down, however, the proposition could set the stage for future regulations against tech companies found to use exploitative labor practices. As debates on workers' rights factor into this November's heated election, Californian voters may set a legal precedent for future labor movements in an increasingly tech-based economy.

Silicon Valley, Contracted

Founded in 2009, Uber became the hallmark of gig work platforms by providing a plethora of independent contract jobs in the immediate area of its headquarters: San Francisco. Seeing as the company offered a lifeline to employment during the financial crisis, San Francisco and state regulators hesitated to crack down on labor regulations it violated.

As Uber, Lyft and similar gig models gathered a larger market share, more and more displaced workers in San Francisco and Silicon Valley became drawn to such platforms. From 2012 to 2014, gig employment grew across San Jose by over 144%, while neighboring San Francisco experienced a similar increase of nearly 142% in the same time frame.

While critical to the region's burgeoning economic output, the explosion of gig labor across Silicon Valley has contributed to the region's staggering income inequality. A 2018 study conducted by researchers at University of California, Santa Cruz found that only the top 10% of workers in the region experienced real wage growth in the past 20 years. Middle-income earners saw their wages decrease by 14.2% while the lowest 40% of wage-earners also experienced varying rates of wage decline.

As more San Franciscans rely on gig platforms for income, the compounding threats of this labor model intensify. As explained by Steve Smith, communications director for the California Federation of Labor, "Many of their drivers are working for as little as $3 to $4 per hour, creating hardships for them and lowering labor standards for all workers in the area. With tens of thousands of workers in the state's urban areas making less than minimum wage, that has an impact on everything from small businesses to state and local governments."

While calculating the exact number of gig workers across Silicon Valley and San Francisco has proved difficult for researchers, the workforce has grown since the onset of the COVID-19 pandemic, providing fuel for both proponents and advocates of Proposition ***22***.

Written by Uber and Lyft's policy directors, Proposition ***22*** has gained considerable support from other gig companies, the California Chamber of Commerce and even some local branches of the NAACP. These organizations argue that preserving driver's status as independent contractors will allow Californians - especially those facing unemployment, enrolled in school or already employed in another capacity - to easily earn extra income. To date, the "yes" on Proposition ***22*** campaign has fundraised a staggering $190 million, primarily from Uber, Lyft, Instacart and Doordash.

Opponents, however, believe that Proposition ***22*** would only create more inequality in urban areas of the state - like San Francisco. According to the National Employment Law Project, Proposition ***22*** would exclude drivers from workplace benefits and wage protections, disproportionately impacting workers of color - who constitute 78% of San Francisco's gig labor force - and reinforcing existing economic inequalities. Opponents include most Democratic politicians, in addition to a host of state and local labor unions. In addition to reproducing inequality for low-income workers, critics also argue that Proposition ***22*** would enshrine growing market power for a relatively small number of companies, further entrenching the division between contractor and executive.

The Right to Unionize

While the right to employee benefits is a key area of debate, Proposition ***22*** presents an additional challenge: unionization. A clause written into the ballot initiative would prevent drivers from forming a union and engaging in collective bargaining. As the proposition would require a seven-eighths majority vote in the California Legislature to be overturned, opponents argue that this clause could obstruct future union-led legal action on fair wages, benefits or workplace protections.

"The fight about AB 5 is a fight about organizing rights, not just about benefits," noted Derecka Mehrens, executive director of Working Partnerships USA, a Silicon Valley based advocacy group bringing together tech workers and community members to organize for labor rights. "It's about the right to organize and who has that right. If these gig workers are employees then they have that right. If they aren't employees they don't."

This fight about unionization is not accidental; it stems from the labor and business models gig companies' desire to artificially lower their operating costs.

Like other rideshare and delivery service apps, Uber and Lyft keep a greater number of drivers on hold than are expected to be in demand. Through an algorithm, companies then select which driver is available to complete a job. Drivers who are waiting for a job to become available essentially compete against each other for the same gig. Rideshare companies then generate revenue through the transaction performed on its online platform, rather than for the transportation service itself.

Companies like Uber and Lyft additionally generate profit by relying on drivers' existing assets - their cars - rather than purchasing physical capital themselves. By also exploiting legal loopholes regarding their drivers' status as contractors and "entrepreneurs," rideshare companies can prevent drivers from setting their own prices and wages even though they own the physical capital necessary for the service. According to labor and technology scholars, this system leads to modern day rentier capitalism - a model that leads to monopolistic competition and increased inequality between workers.

Even among tech employees, there is recognition that this model creates unjust working conditions for residents of Silicon Valley, especially those that rely on gig work as their primary source of income. In addition to Working Partnerships USA, Silicon Valley based community organization Tech Equity Collaborative is rallying tech workers to urge Californians to vote "no" on ***Prop*** ***22***. A statement released by TechEquity Collaborative argued that the organization opposes the ballot measure for its "lower pay and substandard benefits for drivers while preventing them from organizing a union."

While Uber and other rideshare companies cite portions of Proposition ***22*** they claim will improve benefits for drivers - including guaranteed pay at 120% of the state minimum wage for engaged time and some health benefits - researchers have found that this will still create a subpar labor regulation. According to the University of California Berkeley's Labor Center, rideshare drivers will only earn an average wage of $5.64 per hour after numerous loopholes are factored in - a pay rate considerably below California's $13 per hour minimum wage starting in 2021.

In addition to concern about rideshare drivers, union leaders also fear that Proposition ***22*** may affect the ability of workers in other industries to unionize. A recent San Francisco Weekly article noted union leaders' concerns about a "race to the bottom" - a scenario in which more companies outsource their work to gig laborers, saving companies money on employment related taxes and costs, but creating a larger number of workers who lack employer security.

Past ***Prop*** ***22***: Policy Alternatives for the Future

If Proposition ***22*** is struck down, it would create a landmark precedent for future labor regulation. Classifying drivers and other service workers as employees could create the impetus needed to regulate big tech and address growing inequality. If Proposition ***22*** is upheld, however, it could necessitate new public policy solutions that circumvent an employer based welfare model.

In a recent Harvard Business Review article, gig economy scholar Alex Rosenblat argued that the growth of gig work caused by COVID-19 presents the opportunity for policymakers to create a permanent social safety net that would cover workers of all classifications.

Similarly, Guy Standing, the economist who coined the term "precariat" to describe gig worker's precarious labor conditions, has repeatedly stated that a universal basic income may be the only viable, long-term solution to address wage stagnation and tech's increasing need for flexible labor.

But in the United States, these solutions may not be feasible - at least not in the immediate future. While support for universal benefits have grown since the onset of COVID-19, legislators still remain divided over whether a second stimulus package should include unemployment benefits for gig workers as did March's CARES Act.

Additionally, labor experts are still divided on the viability of such solutions, particularly at the state level. Cynthia Estlund, a labor scholar and law professor at New York University, noted that universalized labor benefits could be long-term federal solutions, but will pose challenges for state level regulators. "States don't have the kind of resources to make these policy solutions happen," Estlund told the HPR. "It would take appropriations, it would take expenditures, so at the state level it's just not realistic to get these costs off of employer platforms."

Although individual states may be unable to support alternative labor arrangements, state politics will play a critical role in shaping future labor regulations in the United States. Following California's lead, Massachusetts and New York City have already taken regulatory and legal action comparable to their west coast counterpart. In early 2020, New York state similarly proposed similar regulatory standards for online platforms that use gig work.

As for now the jury is out whether Proposition ***22*** will be struck down, or if rideshare app companies will continue classifying their drivers as independent contractors. "Workers won't stop organizing," continued Mehrens when asked about the possibility of Proposition ***22*** passing. "We'll regroup to support workers building their organizations and communities to fight for better working conditions. The organizing will certainly continue."

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