

Opinion: A \$180 million smokescreen: Who is California's Prop 22 actually protecting?

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Body

What Are AB5 and **Prop 22**?

The 2020 election has commanded the nation's attention in an unprecedented way, with thousands of brands, corporations and influencers chipping in to ensure that their users vote. **Prop 22**, one of dozens of California propositions on the ballot, has generated statewide discussion.

Although AB5 and **Prop 22** would only impact drivers in California, they have caused ripples nationwide, inspiring other states to look at similar bills, and Bernie Sanders to introduce the Workplace Democracy Plan, which takes a similar approach to AB5.

Prop 22 seeks to exempt "app-based transportation and delivery companies" from providing employee benefits to drivers. It sidesteps California Assembly Bill 5 (AB 5), which became law in October of 2019. AB5 asserts that (a) most workers are employees and should be classified as such, and (b) that workers classified as employees deserve greater labor protections, including sick leave, unemployment and workers' compensation benefits and minimum wage laws.

The Yes on **22** Campaign

The campaign for **Prop 22** is funded largely by Lyft, Uber, DoorDash, InstaCart and Postmates, which have contributed over \$180 million, setting a spending record for self-interested ballot propositions. In comparison, the No on **Prop 22** campaign-financed mainly by driver advocacy groups and workers' unions-has raised a mere \$5.6 million.

If you're a California resident and have used Lyft or Uber in the past, you've probably seen the crown jewels of this massive campaign treasure chest: texts, emails and mailers urging you to vote yes on **Prop 22**. Or maybe on Uber you've noticed a screen arguing for **Prop 22** that you must acknowledge before requesting a ride, cars with speech bubbles proclaiming "Yes on **22**." In mid-September Uber required all drivers to fill out a survey on whether or not they supported **22**. Amidst user concerns about this invasive communication strategy, the No on **Prop 22** campaign filed a complaint with the California Fair Political Practices Commission for sending pro-**22** materials to users without including a very specific "paid for by" disclaimer.

This marketing claims that drivers don't want to become employees because "more than 80% of drivers work less than 20 hours a week, have other jobs or responsibilities and can't work set shifts as employees." It positions **Prop 22** as a windfall for California drivers, saving their jobs, giving them the freedom to choose their hours, and giving them exciting new benefits and protections in one fell swoop.

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The Gig Economy Consistently Puts Its Drivers Last

My experience with Lyft and Uber in 2019 alerted me to how false the **Prop 22** campaign's claims to put drivers first really are.

For most of 2019, I worked with national news outlets and Lyft and Uber to push for features to protect rider safety. I connected with dozens of female-identifying drivers and riders who had been harassed and even assaulted. Only when their complaints went viral on Twitter would the companies investigate our reports. Most of the time, we were thrown scraps, getting a template-made response, and, if we were lucky, credit for a future ride. Several women were forced to pay for the rides in which they had been assaulted.

While my suggestions for rider safety were taken and implemented quickly, Lyft and Uber paid little attention to drivers' stories of passengers refusing to leave the car after a ride ended and making unwanted sexual advances. There's a stark contrast in how quickly these companies made changes to protect riders compared to their continued negligence of drivers. When drivers reported these problematic riders, the companies would only prevent that specific driver-rider match from happening again. What of the future drivers who could encounter this rider?

The driver safety features that I saw were meant to detect reckless driving behavior. At their core, all these safety features were intended to keep the paying rider, not the driver, safe and happy - signaling how little, in reality, these companies care about their drivers.

From these months of work, it became increasingly clear to me that Lyft and Uber only care about profit and maintaining the illusion of customer satisfaction. Time and time again, they've put their workforce of around 2 million drivers last.

Why **Prop 22** Is No Different

Prop 22's misleading marketing silences the majority of drivers for whom ride-hailing and delivery is close to full-time work, according to research from UC Santa Cruz. Almost half of drivers drive 35 hours or more a week, and 55% of drivers prefer to earn a set hourly wage after expenses, according to a UCLA survey of Southern California drivers.

Uber and Lyft have also employed scare tactics, claiming that drivers' ability to log in and log out of the app at will would vanish, that they would have to mandate set schedules, bar drivers from working for competitors and limit the number of drivers if **Prop 22** fails to pass. Yet, when you look at the details of AB5, the law clearly states that "nothing in this act is intended to diminish the flexibility of employees who work part-time or intermittent schedules or to work for multiple employers."

As we continue to read the fine print of this ballot measure, we learn that **Prop 22** actually would undo decades of labor protections, creating a "permanent underclass of workers," according to a report by the Partnership for Working Families and the National Employment Law Project.

Prop 22 claims that drivers would receive at least 120% of the local minimum wage, which seems to be a pay bump. However, NELP estimates that **Prop 22** could actually decrease wages by \$500 a week due to a change in how hours worked gets defined. **Prop 22** only counts the time from when a driver accepts a rideshare or delivery request to when they complete that request. Wait time, a huge part of any shift, no longer warrants pay. All in all, **Prop 22** only guarantees drivers an estimated \$5.64 an hour.

Due to this new definition of engaged driving, NELP estimates that drivers will have to work more than 39 hours per week to receive health benefits, instead of **Prop 22**'s stated 25 hours a week. Drivers would only receive coverage if injured on the job, but there would be caps on medical expenses and an expiration on disability payments.

Prop 22 finds another way to dock driver pay, providing mileage reimbursements for drivers of 30 cents per mile, which is much lower than the standard IRS mileage reimbursement of 57.5 cents per mile, but this reimbursement only counts engaged miles. NELP estimates that someone driving **22** miles per hour on average in a 40-hour workweek would make \$287 less each week if **Prop 22** passed.

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While **Prop 22** will let drivers set their schedules, it grants no real time off. No paid rest breaks, no day of rest every seven days, no sick leave, no paid family leave and no unemployment compensation. The list continues.

A study by the University of California, Berkeley's Labor Center, highlighted in Mod Bee, estimates that Lyft and Uber have already left a \$400 million crater in California's state unemployment fund. **Prop 22** would ensure that these gig work companies will never have to contribute to California's unemployment insurance program.

Because **Prop 22** is a statewide standard, cities like San Francisco would no longer be able to pass local ordinances to increase driver pay or guarantee certain protections. Furthermore, by slamming the door to full employment for drivers, **Prop 22** effectively bars workers from unionizing.

Possibly the most frightening for the future of labor, any amendment to **Prop 22** would require a 7/8ths supermajority, a practically impossible threshold to reach. Veena Dubal, a law professor at UC Hastings, raises the alarm that **Prop 22** and its rigidity are the "biggest threat since the 1930s that America has seen to the social safety net, minimum wage and access to secure pay." If **Prop 22** passes, it will become clear to many other industries that "you can buy any law with \$180 million."

How are the companies behind **Prop 22** okay with risking the economic stability of hundreds of thousands of their drivers, 78% of which are Black, Latinx, Asian or multi-racial, during a global pandemic that has been shown to disproportionately impact communities of color?

Why such focus on drastically cutting driver pay to increase revenue, when pandemic times have brought only more expansion and consolidation of gig companies (i.e. Uber acquiring Postmates and Cornershop)?

And if so many drivers claim to support **Prop 22**, then why isn't Uber giving drivers Election Day off to vote, even though it granted all of its employees this privilege?

Make no mistake. The gig economy's campaign for **Prop 22** is a cold, capitalist calculation that once again picks profit and appearances over people.

You can sign up to volunteer for the No on **Prop 22** campaign here.

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