# *[Uber and gig companies spend nearly $200M to knock down an employment law — and it might work]*

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## Body

SAN FRANCISCO — As November's general election enters its home stretch, Uber, DoorDash and other gig economy companies are bombarding TV airwaves, social media and even their own apps with ads and marketing materials promoting a ballot initiative that they say would improve drivers' financial situation and working conditions but that would also deny them the right to be classified as employees in California. The ballot measure, known as Proposition ***22***, would establish drivers as an independent class of workers with access to limited job benefits, along with wage and worker protections they've so far lacked under the gig economy model. Labor groups and many of driver advocates say the companies' efforts, however, do not go far enough to protect workers and are merely an attempt, cloaked in friendly marketing materials, to quash a new law that would guarantee drivers access to the minimum wage, employer-provided health care and bargaining rights. Drawing on a nearly $200 million campaign war chest that Uber, Lyft, food delivery app DoorDash and other tech companies have raised, they are seeking to convince California voters that the ballot initiative reflects the will of drivers. They've cited limited survey data saying the vast majority of drivers want to remain contractors.

But critics see the measure as a last-ditch effort to strong-arm a tough law. The gig companies are following a long history in California of powerful groups "manipulating the way the public understands propositions," said Veena Dubal, an associate professor at the University of California Hastings College of the Law, who focuses on the gig economy and is an advocate for classifying drivers as employees in California. "They are working to trick the public ... into voting in favor of this. And they're getting traction." The heated battle could well result in major implications for gig workers not just in California, but across the country. Here's what you need to know. — — — What is the current status of drivers? In most of the country, drivers are independent contractors who are able to work for Uber, Lyft, DoorDash, Instacart and others on demand. That comes with pros such as flexibility. But it also means there are no guaranteed hours or health care. The companies have thrived on their ability to rapidly scale up their services by contracting as many workers as possible for maximum convenience, connecting an Uber passenger with a driver around the corner, for example. But they also avoid major expenses associated with an established employee base. In California, lawmakers and a major court ruling have now classified drivers as employees. (The ruling has been appealed and a stay has been granted in the meantime, allowing Uber and Lyft to keep operating as usual. The appeals court sided with the state on Thursday, forcing Uber and Lyft to classify drivers as employees, but the order does not take immediate effect.) The gig companies have argued that the new state law known as AB5 mandating them to convert drivers to employees would harm their business models and limit access to their services. And in Uber's case, it has argued the law should not apply at all because as a technology firm it merely connects those in search of work with opportunities. Their combined effort to oppose driver employment is the most expensive such proposition in history, the Los Angeles Times has said. What is ***Prop*** ***22***? California

Proposition ***22***, the App-Based Drivers as Contractors and Labor Policies Initiative, is a measure that would classify drivers as independent contractors under California state law. It would provide workers limited benefits typically associated with employment but without the minimum wage, sick pay and job protections afforded to employees. For example, ***Prop*** ***22*** would guarantee drivers 120 percent of the minimum wage for "engaged time," meaning time giving rides or en route, rather than time logged into a specific app. Drivers are also promised a payment of 30 cents per mile while on a trip or en route for expenses. It also carries heavy protections against further action targeted at gig companies, requiring a seven-eighths supermajority of the legislature to amend it, according to the proposition's text. "It's a very extreme proposition in that regard," said Stanford University law professor emeritus William Gould, a labor lawyer whose research focuses on the gig economy. "And I think it would be virtually impossible to ever reverse it other than through another ballot." Why was AB5 enacted? Assembly Bill 5, the law that prompted ***Prop*** ***22***, aimed to correct years of instability and wage fluctuation and establish worker protections in the gig economy. Companies such as Uber and Lyft were once seen as promising start-ups offering flexibility and opportunity to the labor market. But as the gig economy ballooned to millions of workers and the companies came under increasing pressure to cut their losses, they demanded more and more out of workers for less money. Stories emerged of workers juggling impossible schedules, barely scraping by. Those created pressure to provide workers with a living wage and benefits, such as health care, vacation, sick leave and unemployment. More recently, the pandemic has only exacerbated that pressure. The law passed in 2019 and went into effect this year. The companies challenged the law in court before turning to voters. But a San Francisco judge ruled in August that Uber and Lyft had to make their drivers full employees under the law, a ruling that was stayed while the companies appealed. On Thursday, the state appeals court sided with the lower court judge in ordering Uber and Lyft to stop classifying drivers as independent contractors. Uber and Lyft were given 30 days from an expected later filing, which typically takes about two months, to begin classifying drivers as employees. The companies are expected to explore further appeal options, including taking their case to the state supreme court, but the ***Prop*** ***22*** vote is likely to force the issue before that. What about health care? Under an employment scenario, large companies such as Uber and DoorDash probably would have to provide health insurance to drivers working full time. That's anyone working an average of at least 30 hours per week for more than 120 days a year, according to the Affordable Care Act. Under ***Prop*** ***22***, drivers would receive a health care "contribution equal to 100 percent of the average employer payment" under the Affordable Care Act if they work 25 hours per week. Drivers who worked 15 hours would receive the equivalent of a 50% contribution. Hours would also again be measured by "engaged time." There's a plus for some drivers, labor experts note. "If you work between 15 to 25 hours under ***Prop*** ***22*** you are getting something that you wouldn't have gotten if you were an employee under the employer mandate," said Joanna Kim-Brunetti, vice president of regulatory affairs at the regulatory data firm Trusaic, who focuses on employer health-care compliance. However, it's difficult to tell how many real hours of driving would need to occur to collect 15 hours of "engaged time." "They have not really spelled that out," she said. Why are Californians getting spammed with "Yes on ***22***" messages? Uber, Lyft, DoorDash, Postmates and Instacart are spamming email inboxes with pro-***Prop*** ***22*** messaging and, in some cases, using the apps to promote it directly. The messaging warns of the potential consequences such as higher fares, longer wait times and even service suspension in less-trafficked areas if the measure does not pass. "Your ride prices and wait times are likely to substantially increase while most drivers will lose their incomes," Uber said in one such notice. Blasting people with text messages or in-app messages count as a "non-monetary contribution," a required disclosure. Uber filed one Sept. 10 with the California secretary of state, for a contribution that was estimated to value nearly $850,000. In short, the apps have become ground zero for a high-dollar political campaign and a way for companies to reach millions of eyes like never before. A group of gig workers sued Uber last week alleging the onslaught of pro-***Prop*** ***22*** messages in the app violates their employment rights. The workers are seeking up to $260 million in penalties for what they regard as a campaign of illegal political coercion urging them to support the company's position on the ballot measure. The plaintiffs include workers who are active in labor organizing and the campaign against ***Prop*** ***22***. Uber called the lawsuit "absurd" and "without merit," questioning its motives in a statement issued through a spokesman last week. Who opposes it? Labor advocates, unions supporting gig workers and many drivers themselves have come out against Proposition ***22***, which they say is an effort to maintain the status quo. Legislators including state Assemblywoman Lorena Gonzalez, D-San Diego, who introduced the bill, oppose it. And it has garnered statewide and national attention. Vice-presidential candidate Sen. Kamala Harris, D-Calif., wrote on Twitter, "I urge Californians to join me in standing with these essential workers by voting NO on ***Prop*** ***22***." Joe Biden, the Democratic nominee for president, wrote a similar message in May: "I urge Californians to vote no on the initiative this November." And Sens. Bernie

Sanders, I-Vt., and Elizabeth Warren, D-Mass., are backing full employment. On Monday, leaders of the campaign to oppose the proposition held a news conference taking aim at their opponents' messaging, which has leaned on the notion that support of the measure would advance racial equity. The Yes on ***22*** campaign had garnered the support of several state and local conferences of the NAACP, including the state conference, along with Latino and Asian American advocacy groups. Rep. Barbara Lee, D-Calif., took issue with the campaign's framing, noting how 78 percent of app-based workers were people of color, according to a study looking at San Francisco's gig economy. Lee argued the gig economy had failed them. "You have very clearly crossed the line when you're trying to claim the equity mantle for [multibillion dollar] corporations," she said. "***Prop*** ***22*** will make racial equity worse in California at the worst possible time." Gonzalez, the state assemblywoman, said the companies had whitewashed their platform, which omits a living wage, health care and the right to organize. "This is just audacious what these companies are doing," she said, later calling their efforts "outrageous." Meanwhile, Sanders voiced his objection to a piece of pro-***22*** campaign mail being distributed that implied an affiliation by featuring a campaign's slogan of his, "Feel the Bern," and promoting itself as a voter guide. "This mailer in CA is a lie and I call on Uber and Lyft to publicly denounce the deception," a message posted to Sanders' Twitter account read. "I'm opposed to ***Prop*** ***22*** because people working full time deserve decent wages and good benefits." Still, those opposed to the measure face an uphill spending battle. By Monday, the effort to oppose Proposition ***22*** had raised $19.6 million, less than a tenth the figure of the campaign pushing the initiative. Its fundraising has accelerated, however. Earlier this month the "Yes" campaign stood at more than $186 million compared to Monday's more than $199 million, while the "No" effort had netted less than $15 million compared to Monday's nearly $20 million. The "Yes" campaign had a more $90 million head start dating back to last fall, when Uber, Lyft and Doordash pledged to take their fight against AB5 to the polls. Where do drivers stand? There is no clear, scientific polling outlining drivers' stance. The gig companies and the Yes on ***22*** campaign have repeatedly cited surveys that they say show the vast majority of drivers want to remain independent contractors. Uber in particular cites two surveys, one unscientific and another it paid for, to support its argument that drivers favor being independent contractors. "If ***Prop*** ***22*** doesn't pass, there's a really high likelihood that all of that flexibility will be gone, the ability to work across platforms will be lost and hundreds of thousands of jobs will be lost," said Geoff Vetter, a spokesman for the Yes on ***22*** campaign. The issue has illuminated a gulf within the gig economy between those who use the apps merely to cover expenses and generate discretionary income, and those who work for them as a full-time job. Uber says 91 percent of its drivers across the country work fewer than 40 hours per week. Uber CEO Dara Khosrowshahi said in a blog post this week that if the company were forced to make all drivers across the country employees, for example, it could only support 260,000 full-time roles. That compares to 1.2 million active drivers the company was hosting on its app before the coronavirus pandemic. Will this have national implications? California, home of Silicon Valley and the world's fifth-largest economy overall, has a history of driving national policy when it comes to instituting regulations and reining in large corporations. Experts say if California's effort to make drivers employees is successful, it won't be long before other states and jurisdictions follow suit. And the gig companies probably would take similarly aggressive measures against them, seeking to codify drivers' contract status. Meanwhile, other areas have taken similar steps already — albeit less-sweeping ones. Seattle recently became the second U.S. city, following New York in 2018, to institute a minimum wage for ride-hailing drivers. — — — The Washington Post's Scott Clement contributed reporting.

## Graphic

FILE — In this Oct. 29, 2019, file photo, Carla Shrive, right, who drives for various gig companies, joined other drivers to support a proposed ballot initiative challenging a recently signed law that makes it harder for companies to label workers as independent contractors, in Sacramento, Calif. A battle between the powerhouses of the so-called gig economy and big labor could become the most expensive ballot measure on Nov. 3, 2020, in California history. Voters are being asked to decide via Proposition ***22*** whether to create an exemption to a new state law aimed at providing wage and benefit protections to Uber, Lyft and other app-based drivers. (AP Photo/Rich Pedroncelli, File)

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