

Gig-Economy Giants Face The Ballot Fight of Their Lives

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Body

A group that also includes Lyft and DoorDash has spent nearly \$200 million to support a California proposition that could save them from a new labor law.

OAKLAND, Calif. -- By late August, the urgency was becoming clear. Top executives of Uber, Lyft and the delivery service DoorDash met to discuss a California ballot measure that would exempt them from a new state labor law and save their companies hundreds of millions of dollars.

The survival of their businesses was on the ballot.

Days later, political strategists responded to the executives' concerns by telling the companies, which had already pledged \$90 million to back the measure, that they needed to spend a lot more if they wanted to win, said three people familiar with the discussions, who were not allowed to talk about them publicly.

The fight over the ballot measure, Proposition **22**, has become the most expensive in the state's history since then, with its backers contributing nearly \$200 million and 10 days still to go until the Nov. 3 election. Along the way, the companies have repeatedly been accused of heavy-handed tactics; a lawsuit filed on Thursday claims Uber is coercing the support of its drivers.

Despite the big spending and a barrage of television advertising, only 39 percent of likely voters said they supported Uber and Lyft in a poll last month by the University of California, Berkeley, while 36 percent opposed their proposal and others were undecided. People close to the campaign said they would want to see close to 60 percent approval in polling before they could breathe a sigh of relief.

The ballot measure, which is also being backed by Instacart and a delivery company that Uber is acquiring, Postmates, could be a harbinger for gig companies in the rest of the country.

Prop 22 would exempt the companies from complying with a law that went into effect at the beginning of the year, while offering limited benefits to drivers. The law is intended to force them to treat gig workers as employees, but Uber and its peers have resisted, fearing that the cost of benefits like unemployment insurance and health care could tip them into a downward financial spiral.

Though Uber and Lyft, for example, are publicly traded companies with a combined worth of \$70.5 billion, they have never been profitable. They lose billions of dollars each year, and the pandemic has made turning a profit even more difficult. DoorDash, which has filed to go public, has also struggled. Analysts estimate that complying with California's gig-worker law could cost Uber, which lost \$1.8 billion in its most recent quarter, as much as \$500 million a year.

Gig-Economy Giants Face The Ballot Fight of Their Lives

Uber said it planned to cut off work for the approximately 158,000 California drivers who were active on the platform each quarter if its ballot measure failed. It would employ roughly 51,000 remaining drivers, it said, and raise fares to meet the higher business costs.

The ballot fight gained additional urgency Thursday evening when the California First District Court of Appeal ruled that Uber and Lyft must treat their California drivers as employees under the new labor law. The state attorney general and the city attorneys of San Francisco, Los Angeles and San Diego had sued the companies in May to enforce the law.

"If **Prop 22** does not win, we will do our best to adjust," said Dara Khosrowshahi, Uber's chief executive, in a Wall Street Journal interview this week. "Where in California we can operate is a question mark, and the size and scale of the business will be substantially reduced."

In past dust-ups with local regulators, Uber rallied its passengers for support. The pandemic has made that difficult, so it has urged its tech employees to get involved and used its app to reach out to drivers for support.

The Yes on **22** campaign also started an effort to organize drivers, a move copied from the labor groups that have long tried to organize drivers to fight for better working conditions. And it has forged relationships with high-profile advocacy groups, like Mothers Against Drunk Driving and the California chapter of the N.A.A.C.P.

"Drivers want independence plus benefits by a four-to-one margin, and we're going to fight for them," said Julie Wood, a spokeswoman for Lyft. "We believe California voters are on the side of drivers, too."

A spokesman for DoorDash, Taylor Bennett, said, "Our support for **Prop 22** is part of our commitment to protecting the economic opportunity that tens of thousands of Californians value and the access to delivery that so many restaurants rely on, especially at such a critical time."

A spokeswoman for Instacart declined to comment. Postmates did not respond to a request for comment.

In an effort to gain support, the companies have bombarded riders and drivers with push notifications, campaign ads that appear in their apps and emails promoting **Prop 22**. Before logging on to start work, Uber drivers have been presented with a slide show of warnings about how their lives could change if the proposition fails.

"A no vote would mean far fewer jobs," one of the slides on the Uber app warned. "That's why we're fighting so hard to win."

In the lawsuit filed against Uber on Thursday, drivers claim that the messages violated a state law that forbids employers to coerce their employees to participate in political activity.

"I can't rule out that employers have engaged in coercive tactics like this in the past, but I have never heard of an employer engaging in this sort of barrage of coercive communications on such a broad level, ever," said one of the attorneys for the drivers, David Lowe, a partner at Rudy, Exelrod, Zieff & Lowe. "It is such an extraordinary thing, from my perspective, for Uber to exploit this captive audience of workers." Mr. Lowe said he opposed **Prop 22**.

Matt Kallman, an Uber spokesman, said, "This is an absurd lawsuit, without merit, filed solely for press attention and without regard for the facts." He added, "It can't distract from the truth: that the vast majority of drivers support **Prop 22**."

In early October, the **Prop 22** campaign was denounced by Senator Bernie Sanders after a fake progressive group calling itself Feel the Bern endorsed the proposition in a campaign flier that implied Uber had the backing of progressive leaders. The mailers were, in fact, sent by a firm that creates political mailers representing different views.

"The **Prop 22** campaign is working hard to reach voters across the state and the political spectrum to ensure they know that drivers overwhelmingly support **Prop 22**," said Geoff Vetter, a spokesman for the Yes on **22** campaign, which is funded by Uber, Lyft, DoorDash and other gig economy companies.

Gig-Economy Giants Face The Ballot Fight of Their Lives

Questions have also been raised about the N.A.A.C.P. endorsement. A political consulting firm run by Alice Huffman, the leader of the California N.A.A.C.P., has received \$85,000 from the gig companies' campaign, public records show. The payment was reported earlier by the news site CalMatters.

Mr. Vetter said the payments were for "outreach." The N.A.A.C.P. did not respond to a request for comment.

Uber held an all-hands meeting this month for employees to meet drivers who support the proposition, and sent several emails encouraging staff to lobby friends and family.

Although the internal messages were upbeat, the policy staff raised concerns with campaign consultants during the meetings in late August and early September, the people familiar with those meetings said. Among their worries: that the ballot language was unfavorable to the companies, and that people were voting earlier than usual because of the pandemic, meaning advertising would need to be rapid and aggressive.

"We look at the data every day, and our metrics show a tight race," Justin Kintz, Uber's head of public policy, said in an early October email to Uber employees, obtained by The New York Times. "At the same time, with continued strong execution against our plan, we're confident we can win."

While the email noted that campaigning was optional, Mr. Kintz encouraged employees to participate in texting banks to contact voters and to promote the campaign in conversations with friends.

"The big reason that you're seeing so much spending is because of the high stakes in this election," said Mr. Vetter, the spokesman for the campaign. "Hundreds of thousands of jobs are on the line. These are services that millions of Californians rely on."

The opposition campaign, which is funded by labor unions, has raised about \$15 million. Supporters of the No on **22** campaign have argued that voters should reject the push by tech companies, and that the measure would harm workers already at a disadvantage during the pandemic.

"Proposition **22** will make racial inequality worse in California at the worst possible time," said Representative Barbara Lee, a California Democrat. "You have very clearly crossed the line when you try to claim the equity mantle for a campaign that has always been about allowing multibillion-dollar app companies to write their own law so that they can keep exploiting the labor of drivers, eight in 10 of whom are people of color."

No matter the outcome of the vote, the gig companies and their opponents are likely to take their campaigns to Washington. Massachusetts has filed a lawsuit similar to the one that the California court decided on Thursday evening, and Uber hopes to avoid continued state-by-state battles by pressing for federal legislation.

Erin Griffith and Noam Scheiber contributed reporting.

<https://www.nytimes.com/2020/10/23/technology/uber-lyft-california-prop-22.html>

Graphic

PHOTOS: Tyler Sandnes cheering on other opponents of **Prop 22**, which would exempt gig companies from California labor laws, during a rally last week in Los Angeles. (PHOTOGRAPH BY TAG CHRISTOF FOR THE NEW YORK TIMES) (B1)

Outside Uber's headquarters in San Francisco last week, drivers and other gig workers urged California voters to reject Proposition **22**, which could save companies like Uber and Lyft from a new labor law. Right, one of several "Yes on **Prop 22**" slides that Uber has shown drivers before they log on for work.

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The San Francisco rally by drivers. "Our metrics show a tight race," Uber's head of public policy said in an email to employees early this month. (PHOTOGRAPHS BY JIM WILSON/THE NEW YORK TIMES) (B6)

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