

[Why Uber and Lyft are taking a page out of big tobacco's playbook in labor law battle; Companies are waging a scorched-earth regulatory battle to avoid providing basic benefits to their drivers in California](#)

The Guardian (London)

September 11, 2020 Friday 1:53 PM GMT

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Section: OPINION; Version:1

Length: 1234 words

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Highlight: Companies are waging a scorched-earth regulatory battle to avoid providing basic benefits to their drivers in California

Body

Uber and Lyft are waging a scorched-earth regulatory battle to avoid providing basic benefits to their drivers, now considered essential workers, in their largest US market: California. In response to a lawsuit by the California attorney general, Xavier Becerra, a judge found the companies' drivers to be employees and ordered Uber and Lyft to act accordingly - including by providing a living wage, unemployment benefits, state-mandated sick leave and full reimbursements for expenses like cleaning and personal protective equipment.

The companies have responded by threatening to lay off tens of thousands of workers. Their goal is to extend the crisis until November, when Proposition [22](#), a referendum written and [sponsored by the gig companies](#), will be voted on. [Prop 22](#) would create a special exemption from California employment laws just for these companies, while also pre-empting local regulation. The companies have taken a page from big tobacco's political playbook to avoid complying with wage laws and basic aspects of the social safety net in exchange for the labor of their [majority immigrant and people-of-color workforce](#).

Like the tobacco companies, gig companies have spent millions of dollars to directly and indirectly [challenge independent research](#) that is critical of the companies. They pay for their own [self-serving studies](#). They also manipulate the media, spend record-setting amounts to [lobby legislators](#), [create faux grassroots movements](#) (also called astroturfing) to carry their message, and pay [lip service](#) to social justice issues to obscure their true motivations. They have even used their access to riders and drivers - through email, text and in-app messaging - to sway the voting public.

A recent investigative report reveals that the [Prop 22](#) campaign and their supporters (with or without assistance of the gig companies themselves) have also leveraged another political tactic for which big tobacco is notorious: attacking and harassing critics, including academics and government officials.

I have been on the receiving end of these harassment and attacks.

I am a professor of law at the University of California, Hastings College of Law, and for nearly a decade, have done both legal research and ethnographic fieldwork studying self-organized drivers in California's taxi and ride-hailing industries. I have published extensively in academic journals and media on the topic. My expertise, policy

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recommendations and central empirical findings - which highlight how and why Uber and Lyft drivers live devastatingly precarious lives - have been used in regulatory and enforcement contexts around the world.

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However, since February of this year - the same month that the companies amped up the \$110m **Prop 22** campaign payments to public relations and political opposition research firms - I became subjected to a relentless stream of online and offline attacks. In March, during the second week of California's pandemic lockdown, my home address was posted online by a **Prop 22** supporter. Two weeks later, a series of articles about me and my family (full of conjecture and misinformation) were posted on a rightwing blog, a spinoff of the Washington Times. In late July, my university received a massive public records act request for my emails and text messages from one of the campaign's research firms (MB Public Affairs [previously hired by Altria, formerly known as Philip Morris](#)). A supporter of the campaign later filed a bogus complaint of illegal lobbying against me (I do not take money for my advocacy). And then, bizarrely, the campaign's Twitter account [directly abetted my online harassment](#).

Some of this has been horrendous; some of it has just been a hassle. But taken together, it has been overwhelming - an aggressive attempt to silence a critical, independent academic voice.

But too much is on the line, in both California and beyond, for me to be silent in this moment.

In practice, Proposition **22** would permanently codify a third, substandard regulatory category for California ride-hail and delivery workers, in between employees and independent businesspersons.

Under the measure, these workers would lack the bargaining power of true independent contractors, who commonly set their own rates, build client lists and decide how to do their work - here, think of a plumber who runs their own business.

But, if **Prop 22** is successful, they would also lack the protections of employment status, including a guaranteed wage floor for all the time they spend laboring, workers' compensation if they are hurt on the job, and state unemployment insurance if they lose their job through no fault of their own (ie because of Covid-19). The campaign's suggestion that workers will get "historic" new benefits like discrimination protection are a mirage, since the measure fails to protect against multiple forms of discrimination (eg, immigration status) and fails to define how a worker would enforce these rights, making them dead letter protections.

Meanwhile, the companies would save billions of dollars, while taxpayers foot the bill. In California, alone, Uber and Lyft have already avoided an estimated \$413m in state unemployment insurance taxes between 2014 and 2019. And in the middle of a pandemic in which they are considered "essential workers", only a fraction of the workforce would get healthcare subsidies. If passed, similar legislation has the potential to spread well beyond the state and the sector, dismantling the limited employment protections workers across the nation depend upon. Indeed, in coalition with companies like Amway and Kelly Services, this is the industry's long-term [plan](#).

So, what does big tobacco's political script tell us about what we can expect next from gig companies?

In 1954, the tobacco industry [paid to publish](#) the Frank Statement to Cigarette Smokers in hundreds of US newspapers. The statement said that the public's health was the industry's primary concern. Similar to the [piece](#) published recently in the New York Times by Uber's CEO, Dara Khosrowshahi, the tobacco companies promised and proposed a variety of good faith changes.

What followed for the tobacco industry, however, were decades of deceit and regulatory influence that ultimately cost millions of lives. When Mr Khosrowshahi took over as Uber CEO in 2017, he pledged to run a different company with a different work culture - no more Kalanick-era lawlessness, no more harassment, no more toxicity. But for the drivers of the company, very little changed; if anything, working conditions got worse as wages dropped and they had to work longer and harder to earn the same amount. Transitioning from private ownership to being

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publicly traded has not changed the company's aggressive avoidance of the law and "breaking things" to get what they want. Drivers, regulators and the public cannot wait any longer for good faith changes.

Trying to legalize a new, substandard tier of work, especially for a largely minority workforce in the context of a raging pandemic and growing economic inequality, is not reasonable or good policy.

And no matter how hard they try, no one will stop me from saying it.

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Load-Date: September 11, 2020

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