

Prop 22 provides contentious \$200 million case study on CA initiative process

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Body

As the election draws near, the "Yes on Proposition 22" campaign is spending record amounts of money to sway voters. The campaign's spending is drawing questions about the power that money has on politics.

Politics is all about words. Through social media, the press, and conversations with friends and family, voters are inundated with information that affects their day-to-day lives every election cycle. In the United States though, political opinions aren't only expressed through written or spoken words. Thanks to Citizens United, money is also considered political speech. And no one has ever raised and spent more on a proposition across California than Uber, Lyft, DoorDash, and Instacart have this year.

After more than \$184 million of funding from these four companies, a figure that surpasses the most money ever spent on a ballot measure in any state, Californians will decide whether or not to further regulate California's gig economy with Proposition 22.

Prop 22, an initiative placed on the ballot by a coalition of app-based driver and delivery platforms, exempts "app-based transportation and delivery companies from providing employee benefits to certain drivers."

But beyond this description, everything else surrounding **Prop 22** continues to foster debate among various stakeholders, politicians and media members.

The coalitions surrounding the initiative are diverse. Various chambers of commerce support the "Yes on 22" side along with scattered local NAACP branches across the state. While **Prop 22** would not repeal AB 5, the landmark labor legislation regulating the classification of workers, it would nullify the portion that covers app-based transportation and delivery drivers.

On the flip side, national, state, and local elements of the Democratic party, including presidential nominee Joe Biden and his running mate Kamala Harris, endorse the "No on 22" campaign. Importantly, labor unions and workers-rights groups are the staunchest backers of the "No on 22" campaign, including divisions of American Federation of State, County, and Municipal Employees, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and groups that represent minority workers in California.

Multiple organizations backing the two sides were reached for comment, without response.

Ultimately though, the lopsided fundraising from the "Yes on **Prop 22**" campaign skews the discourse surrounding the initiative. To try and square this, I talked to two state lawmakers, from opposite sides of the aisle, State Assemblywoman Lorena Gonzalez Fletcher and Assemblyman Kevin Kiley, who are familiar with the historical context of the fight that has been raging around California's gig economy over the past few years.

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Both State Assemblywoman Gonzalez Fletcher and Assemblyman Kiley responded to requests for comment, expressing their views and the evidence that drives them, and addressing some of the more contentious points surrounding **Prop 22**.

Assemblywoman Gonzalez Fletcher represents California's 80th District, which includes City Heights, National Heights, and Chula Vista. While in the Assembly, she supported workers and labor unions, earning a reputation that landed her squarely within the independent contractor-employee debate back in 2018. But following a landmark California Supreme Court ruling in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, Gonzalez Fletcher became even further entrenched within the California labor sphere..

This ruling had led to a tectonic shift in California's labor laws, simplifying the previously complicated test for classifying workers. Dynamex had uprooted decades of common business practices, sending both employers and workers scrambling to adapt to the new law of the land regarding worker classification. Into this chaos, enter Assemblywoman Gonzalez Fletcher.

"In April 2018, a bunch of folks came to us, both on the employers' side and the employees' side, both labor unions and worker advocates as well as employer associations and different industries," she said in an interview with The UCSD Guardian. "They asked me to author a bill and I did... You know when business and labor both come to you and say, 'Yes, we need something here' you think, 'Okay, I can do this, we can work together.'"

The Assemblywoman took this wide cross-section of support and, using the Dynamex ruling, authored AB 5, which, Gonzalez Fletcher says, "is truly just taking the [State] Supreme Court test and saying 'Yes, this applies to everybody, except in these situations.'"

Fast forward to January 2020: AB 5 goes into effect for the first time in California, and while some industries make the changes and adjust workers from independent contractors to employees without issue, others push back, namely app-based transportation and food delivery platforms.

This pushback has not been exclusive to the companies it affects though, as it's been seen across the California political sphere. Some, like long-time LA Times political columnist George Skelton, argue that "we're at this point with Proposition **22** because Gov. Gavin Newsom and the Democrat-dominated Legislature refused to [...] negotiate a compromise" due to discord among the companies and labor organizations on collective bargaining and other issues.

State Assemblyman Kiley takes his frustration even further, pushing **Prop 22** as one step on the path to repealing AB 5. A committee led by Kiley donated \$275 to the Yes on **22** campaign, making him the only monetary backer that isn't a major technology company or the California Republican Party.

"AB 5 ... has caused unprecedented harm to workers, consumers, and small businesses," Kiley said in a statement to The UCSD Guardian. "**Prop. 22** is an important first step toward fully repealing AB 5 and restoring the livelihoods of hundreds of thousands of independent workers throughout the state."

Despite their intended messaging, another louder point rises above the advertising: the companies that are set to be regulated are attempting to regulate themselves. The Yes on **22** campaign concedes certain privileges that aren't currently offered to workers, including a "minimum earnings guarantee, and access to health care benefits and insurance against illnesses and injuries acquired on the job." However, these companies still are working around providing full employee benefits in a way that benefits their bottom line.

By crafting their own initiative, the Yes on **22** campaign backers could essentially legislate regulations on their own industry. While **Prop 22** would not repeal AB 5, it would practically keep drivers from coming under state regulations for the foreseeable future thanks to a particularly thorny portion of the initiative, the seventh-eighths vote in both state houses required to repeal **Prop 22**, that Skelton describes as "just bad government."

Ultimately, in both the Yes on **22** ad campaigns and Kiley's statement, the focus is on the drivers and their potential loss of flexible wage-earning as independent contractors. But the broader economy and fiscal future of the state

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may be at play, as well as the power of the people and their representatives to adjust this initiative in the future. These storylines present important contrasts and options left out by the narrow view of the Yes on 22 campaign.

Outside of their key messages, there are two main points that still are up for debate: the flexibility of workers with or without Prop 22 and the veracity of Uber's and Lyft's threats to leave California.

Skelton's key issue centers around flexibility, and it's actually driving him to lean Yes on 22. He "like[s] people being able to work independently when they want to," which implies he doesn't feel drivers will be able to have flexibility as employees without Prop 22.

Gonzalez Fletcher disagrees with the flexibility argument.

"There's nothing in California law that requires an employer to be inflexible with people's work schedules," she said. "In fact, if you have a salary job with Uber you have a very flexible schedule; they allow you to work when you want and from where[ver] you want. They offer the flexibility to their actual employees and yet somehow they suggest that being an employee will take away [drivers'] flexibility, and there's nothing in law to suggest that."

The key issue for other Yes on 22 supporters comes down to fears that these app-based platforms will leave the state or see their profitability suffer.

"We could see Uber and Lyft leave California all together, something they have already said they are willing to do. [And even] if they stay and the courts make them adhere to AB 5, you will see the number of driver jobs drop and the cost for riders increase," a representative from Assemblyman Kiley's office said in a statement, citing a report out of UCLA.

Once again, Gonzalez Fletcher feels these fears are overstated. "Other areas have imposed rules on [these companies] and they haven't left. New York City imposed a minimum wage and they're still there. Seattle just imposed a minimum wage, they're going to stay there," Gonzalez Fletcher said. "California is a quarter of their entire market, they're not leaving California. It's a great threat but if they did, there are two dozen companies ready to come in and fill that void. Where there is a demand there will be a supply."

With Prop 22, the unprecedented fundraising of Uber, Lyft, DoorDash, and Instacart continues to keep voters from coming to information equally. And even with the one-sidedness of this campaign, voters are still struggling to come to a decision. But however Californians end up voting, knowing both sides of the argument allows for a more informed decision.

Photo courtesy of the Assembly Democrats.

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