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## Transportation Network Companies, Proposition 22, and the Future of Labor Relations in the United States

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# Transportation Network Companies, Proposition 22, and the Future of Labor Relations in the United States

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*While the victory of Proposition 22 (Prop 22) in the November 3rd, 2020 California State election came as a shock to many observers, Transportation Network Companies (TNCs) such as Uber and Lyft, the architects and beneficiaries of the ballot measure, have a long track record of subverting regulatory attempts. From this historical perspective, the novelty of Prop 22 is not related to the means employed in its victory, but in the sheer scale of effort involved. In other words, Prop 22 represents an escalation of a familiar framework of regulatory subversion by the TNCs, whose success at the ballot box may turn the initiative campaign into something of a model for their contemporaries looking to skirt burdensome regulation or trim labor costs and benefits.*

*From this vantage, it is rather easy to draw any number of worthwhile lines of inquiry from Prop 22's victory, but this paper will concern itself primarily with the implications of these proceedings on the future of labor relations in this country. It will strive to address these implications by beginning with an introductory section that will familiarize the reader with a framework for understanding the TNCs history of regulatory subversion. Then it will present a brief outline of the relevant case and legislative history that led the TNCs to pursue Prop 22 in California. From there, it will take a step back and discuss what Prop 22 does and, by extension, why it is so crucial for the TNC business model. It will then turn its attention to the pro-Prop 22 campaign and how it used in-app "clicktivism", political contributions, misinformation, and superficial racial politics to mobilize the California electorate. Finally, the paper will close with a section dedicated to parsing the implications of Prop 22's passage, especially as they relate to the future of labor relations in this country.*

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## INTRODUCTION

In January 2018, a report titled *Uber State Interface: How Transportation Network Companies Buy, Bully, and Bamboozle Their Way to Deregulation* was released, which used four years of data and case study analysis to develop a framework of state interference by transportation network companies (TNCs), such as Uber, Lyft, and DoorDash. In the report, state interference is defined as “the strategy of circumventing local democracy by passing state-level laws that prevent cities from governing on specific issues” and is analogous to legal preemption.<sup>1</sup> Typically, according to this framework, TNCs will enter a local market and ignore existing transportation regulation regimes – provoking a reaction by entrenched industry and political interests, such as taxi companies and government regulators. In response to this pushback – which often takes the form of municipal-level regulatory attempts – the TNCs will initially attempt to spend their way to state preemption of these local efforts by leveraging their significant resources into political capital through expensive lobbyists, advertisements, and political donations. Should these more traditional legislative efforts fail, they will then attempt to “bully and bamboozle” their way to important regulatory concessions via threats and misinformation campaigns that have proven effective at mobilizing the rideshare consumer base against regulation and neutralizing anti-TNC political action at the local level.<sup>2</sup>

Perhaps the most-prized concession sought by TNCs is their ability to classify their drivers as independent contractors as opposed to employees, which generally requires state interference “given that the employment relationship is typically determined by a combination of state and federal laws.”<sup>3</sup> This classification is vital to the TNC business model – a topic to which we will return – and a number of states, particularly those with ideologically conservative leadership which have passed legislation facilitating the codification of this TNC-friendly classification regime. Often these statutes were written to preempt existing local classification regulations, such as in Texas and Pennsylvania. However, a number were sponsored or even written by TNCs to preempt an otherwise empty policy field.<sup>4</sup>

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<sup>1</sup> Joy Borkholder et al., *Uber State Interference: How TNC’s Buy, Bully, and Bamboozle Their Way to Deregulation* (National Employment Law Project and Partnership for Working Families, 2018), 10, <https://s27147.pcdn.co/wp-content/uploads/Uber-State-Interference-How-Transportation-Network-Companies-Buy-Bully-Bamboozle-Their-Way-to-Deregulation.pdf>.

<sup>2</sup> Borkholder et al, 15.

<sup>3</sup> Borkholder et al, 13.

<sup>4</sup> Borkholder et al, 20.

Within this framework, the passage of the TNC-sponsored Proposition 22 in California via that state's ballot initiative process can be viewed as something of a new phenomenon. Taking advantage of democratic processes is not new for the TNCs, but Proposition 22 preempts an existing *state* law – California Assembly Bill No. 5 (AB 5), passed via the legislature in part to force TNCs to classify their drivers as employees – whereas the state interference framework outlined by the Borkholder et al. report was used to explain state interference of *local* regulation. However, while this particular aspect of the process was certainly novel, Proposition 22 is best understood as an *escalation* of the typical TNC strategy of state interference, where an existential threat to the TNC business model prompted further innovation within the existing framework.

This paper will begin with a brief outline of the relevant case and legislative history which led the TNCs to pursue Proposition 22 in California. From there, it will discuss what Proposition 22 does and, by extension, why it is so crucial for the TNC business model. It will then turn its attention to the pro-Proposition 22 campaign and how it used in-app “clicktivism,” political contributions, misinformation, and superficial racial politics to mobilize the California electorate. The paper will close with a section dedicated to parsing the implications of Proposition 22's passage, including what it portends for the future of labor relations in this country.

## A BRIEF HISTORY

For rideshare drivers, one of the primary appeals – at least initially – of working for a TNC is the flexible scheduling which gives them some degree of control over when and where they will work. However, TNC executives have argued since the industry's inception that this aspect of employment is contingent upon the driver's classification as an independent contractor rather than employee. In the United States this was generally considered an acceptable tradeoff for the majority of drivers until wages began to drop below the minimum wage, which began to occur in California around 2017.<sup>5</sup> Compounding this dynamic was the growing sense that precarity is the Janus-faced twin of flexibility:

Drivers complain of fare cuts, lack of transparency in pay calculation, high expenses associated with driving, fear of termination associated with Uber's rating system, and lack of

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<sup>5</sup> Mark Erlich, “Construction Workers and the Gig Economy,” *Dissent*, 2020 Spring Edition, <https://www.dissentmagazine.org/article/construction-workers-and-the-gig-economy>.

training and driver support – many of which could be addressed through existing labor and employment laws.<sup>6</sup>

As the end of this passage suggests, drivers in California and elsewhere began to link this precarity with their employer-imposed classification as independent contractors.

When the California Supreme Court released its decision in the 2018 *Dynamex Operations v. Superior Court* case, a ruling that raised the standards of independent contractor classification in favor of employees via the rigorous ABC test, it set the stage for a political showdown between drivers and their TNC bosses.<sup>7</sup> The *Dynamex* ruling, one of the more famous rulings in a massive case file of similar litigation, provided the legal foundation for a piece of legislation known as AB 5 that was signed into law on September 18th, 2019 by California Governor Gavin Newsom. AB 5 was a huge victory for labor advocates because it codified the *Dynamex* ruling’s ABC test into California state law as the default determination of the employer-employee relationship, meaning that rideshare drivers would have to meet the following criteria to be classified as independent contractors:

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- B. The person performs work that is outside the usual course of the hiring entity’s business.
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.<sup>8</sup>

This mandated re-classification had the potential to open the door for drivers to receive the sorts of labor protections and benefits, such as a guaranteed minimum

<sup>6</sup> V.B. Dubal, Ruth Berlins Collier, and Christopher Carter, “Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States,” *University of California Hastings College of Law Legal Studies Research Paper Series* (2018): 17, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3147296](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3147296).

<sup>7</sup> Andrew Hawkins, “Uber and Lyft drivers could get employment status under California court ruling,” *The Verge*, May 1<sup>st</sup>, 2020, <https://www.theverge.com/2018/5/1/17308178/uber-lyft-drivers-california-court-classification-dynamex>.

<sup>8</sup> Assembly Bill No. 5, California Legislative Assembly, 2019 Regular Session, 4, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5).

wage and right to unionize, that are not afforded to independent contractors under current labor law.<sup>9</sup>

The TNCs responded to the passage of AB 5 by ignoring the new classification requirements entirely. Uber released a statement declaring that the new standards did not change its classification calculation, and cited statistics showing that the majority of its drivers support their status as independent contractors.<sup>10</sup> There is reason to be skeptical of these figures, however, as the *New York Times* have reported on past efforts by the company to manipulate survey data in its favor.<sup>11</sup> Regardless, in the same AB 5 press statement, Uber announced its intention to begin work with other TNCs to craft the ballot measure campaign that would become Proposition 22.

However, while the TNCs continued to hold the line on the classification issue in defiance of AB 5, they were met with resistance from a variety of sources. David Weil, a former member of the Obama Administration's Department of Labor, penned a 2019 *Los Angeles Times* op-ed condemning the TNCs for their systematic misclassification of its drivers.<sup>12</sup> In 2020, an official California state order declared that TNC drivers do not meet the criteria established under AB 5 for independent contractor status.<sup>13</sup> Meanwhile, a pair of lawsuits were brought against Uber and Lyft on behalf of rideshare drivers in order to stop their continued misclassification under AB 5 and to recover unpaid wages lost due to this misclassification.<sup>14</sup> And in a separate legal case, the San Francisco Superior Court also found the TNCs to be in violation of AB 5 classification requirements, a ruling

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<sup>9</sup> Dubal et al, *Disrupting Regulation*, 7.

<sup>10</sup> Tony West, "Update on AB5," Uber Newsroom, September 12, 2020, <https://www.uber.com/newsroom/ab5-update>.

<sup>11</sup> Mike Isaac, "Uber's C.E.O. Plays with Fire," *New York Times*, April 23, 2017, <https://www.nytimes.com/2017/04/23/technology/travis-kalanick-pushes-uber-and-himself-to-the-precipice.html>.

<sup>12</sup> David Weil, "Op-Ed: Call Uber and Lyft drivers what they are: employees," *Los Angeles Times*, July 05, 2020, <https://www.latimes.com/opinion/op-ed/la-oe-weil-uber-lyft-employees-contractors-20190705-story.html>.

<sup>13</sup> California Public Utilities Commission, "Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enable Transportation Services," COM/GSH/kzl, San Francisco, CA: CPUC, June 9<sup>th</sup>, 2020, 5.

<sup>14</sup> California Labor Commissioner's Office, "Labor Commissioner's Office Files Lawsuits against Uber and Lyft for Engaging in Systemic Wage Theft," CDIR 2020-65, 5 August 2020, <https://www.dir.ca.gov/DIRNews/2020/2020-65.html>.

which prompted both Uber and Lyft to threaten to suspend California operations if the ruling wasn't overturned on appeal.<sup>15</sup>

As mentioned in the introduction, this is largely familiar ground for the TNCs, who are well-versed in using threats and ballot initiatives to skirt regulation.<sup>16</sup> However, what is novel about this particular case is how the level of needed preemption had changed for the TNCs: while their previous efforts had focused on preempting *local* regulation via state interference, in this circumstance, the TNCs needed to preempt a *state* regulatory framework. That the TNCs pumped roughly \$200 million into the Proposition 22 campaign, outspending their opponents nearly 10 to 1, demonstrates the significant savings these companies expected to accrue via this preemption.<sup>17</sup> In the next section we will take a step backwards and explain what it is about this classification question that is so crucial to the TNC business model and how Proposition 22 answers it, at least in California.

## WHAT PROPOSITION 22 DOES

The core goal of the Proposition 22 campaign was to exempt app-based drivers from the AB 5 classification regime, and return the sector to a less-stringent regulatory system that would allow the TNCs to continue categorizing their drivers as independent contractors.<sup>18</sup> Proponents of Proposition 22 spun the regulatory roll-back as a potential victory for those drivers who prioritized flexibility, and pointed to a number of additional benefits they would receive under the ballot measure, including an earnings guarantee and health care contributions.<sup>19</sup> However, the majority of these benefits are tied to a driver's "engaged time," which does not include a number of work-related actions such as "pumping gas, waiting for a ride request to pop up on their phones, or wiping vomit from the backseat after dropping off a drunk passenger who didn't tip."<sup>20</sup> For example, the earnings guarantee, which ostensibly sets a floor for driver compensation at 120% of the California minimum wage, would work out to an estimated \$15.60 in 2021. However, a UC Berkeley Labor study found that after accounting for the full cost of associated expenses and

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<sup>15</sup> Clare Roth, "Uber Seeks Court Reprieve After California Shutdown Threat," *Bloomberg News*, August 17<sup>th</sup>, 2020, <https://www.bloomberg.com/news/articles/2020-08-17/uber-seeks-court-reprieve-after-california-shutdown-threat>.

<sup>16</sup> Dubal et al, *Disrupting Regulation*, 12.

<sup>17</sup> Michelle Chen, "A Blow for Labor Rights in California," *Dissent*, November 9<sup>th</sup>, 2020, <https://www.dissentmagazine.org/blog/a-blow-for-labor-rights-in-california>.

<sup>18</sup> *Ibid.*

<sup>19</sup> Yes on 22. 2020. "Key Facts About Proposition 22." Yes on 22, 2020. Retrieved on November 15, 2020 from <https://yeson22.com/get-the-facts/>.

<sup>20</sup> Chen, "A Blow for Labor Rights in California."

waiting time, the actual take home pay for drivers would be equivalent to \$5.64 an hour, far below both the California and federal minimum wage.<sup>21</sup> The other ancillary benefits included in Proposition 22 are similarly inferior to the protections granted by standard state and federal labor laws provided to employees but, crucially, not to independent contractors.

And this is the crux of the matter: TNCs push schedule flexibility supposedly to empower workers, but the savings they reap from this dubious classification are so massive that they comprise a major foundation of their overall business model. To get a sense of these savings, an article in *The American Prospect* from October 2020 reported that Uber and Lyft’s misclassification of its drivers produced a windfall of \$413 million in unpaid unemployment insurance payments alone since 2014.<sup>22</sup> And an article in the Spring 2020 edition of *Dissent* estimated that TNCs save up 30 percent in labor costs by depriving their drivers of “a century of hard-won workers’ rights” such as entitlement to overtime compensation, minimum wage protections, and the right to form a union, among others.<sup>23</sup> These companies do not turn a profit, so this misclassification is one of the only things, alongside large venture capital subsidies, keeping them afloat while they wait (and wait) for driverless technology to remove drivers and their associated costs from the equation altogether.<sup>24</sup> When viewed from this perspective, it is perfectly understandable that the TNCs would view AB 5 as an existential threat, because its crackdown on employment relationship misclassification fundamentally destabilizes a key pillar of their business model.

Before moving on, it is worthwhile to consider the implications of this business model from the perspective of the California State government, its taxpayers, and the TNC drivers themselves. As outlined in a 2020 study co-produced by the UCLA Labor Center and SEIU-United Healthcare Workers West, the vast majority of the savings which the TNCs accumulate from their preferred classification practices is money that would otherwise be going into state worker protection funds, such as the aforementioned unemployment insurance and workers compensation programs. The problem is that without that money flowing from the

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<sup>21</sup> Ken Jacobs and Michael Reich, “The Effects of Proposition 22 on Driver Earnings: Response to a Lyft-Funded Report by Dr. Christopher Thornberg,” University of California Berkeley Institute for Research on Labor and Employment, October 31, 2019, 1, <https://laborcenter.berkeley.edu/wp-content/uploads/2020/08/Response-to-Thornberg.pdf>.

<sup>22</sup> Alexander Sammon, “How Uber and Lyft Are Buying Labor Laws,” *The American Prospect*, October 5<sup>th</sup>, 2020, <https://prospect.org/labor/how-uber-and-lyft-are-buying-labor-laws/>.

<sup>23</sup> Erlich, “Construction Workers and Gig Economy.”

<sup>24</sup> Alex Press, “With Prop 22’s Passage in California, Tech Companies Are Just Writing Their Own Laws Now,” *Jacobin*, November 6<sup>th</sup>, 2020, <https://jacobinmag.com/2020/11/proposition-22-california-uber-lyft-gig-employee>.



TNCs into these programs – and other avenues such as the payroll tax, which the TNCs are also able to dodge via misclassification – the burden for supporting injured or out of work drivers falls onto the California taxpayer.<sup>25</sup> Even in the best of times this is an onerous arrangement for Californians, but the COVID-19 pandemic has highlighted how inequitable it truly is as the baseline precarity of rideshare driving has been compounded by virus-related unsafe working conditions, an economic recession that has seriously curtailed moneymaking opportunity, and largely unresponsive employers.<sup>26</sup> The result has been a workforce with little recourse but to either suffer alone or turn to the government – and by extension its taxpayers – for help.

Of course this is the same period during which the TNCs were spending millions to preserve their preferred classification status, and when viewed from this perspective, it is rather surprising that Proposition 22 was able to emerge from the November 2020 election having passed, especially considering that many of California’s most famous ballot measures – such as Proposition 13 – have concerned themselves with *decreasing* the tax burden on state citizens.<sup>27</sup> Proposition 22’s victory in this context speaks to the sheer scale and scope of the effort undertaken by the TNCs. In the next section, we will discuss how they leveraged their resources to achieve victory.

## THE CAMPAIGN

A common-place TNC strategy in regulatory battles is to attempt to turn customers into political advocates. This is an incredibly innovative tactic that is generally not typical of a for-profit company, and it has proven very useful in the TNCs quest to maintain a lucrative business environment. However, while these companies tend to paint this mobilization as a standard quid pro quo arrangement, where the TNCs trade a superior product for political support, it obscures the work being done to mystify the relationship between regulation and the companies’ core business model.<sup>28</sup> This mystification is a necessary part of the broader framework posited by Borkholder et al which the TNCs employ to “buy, bully and bamboozle” their way to favorable regulatory regimes. In this section, we will discuss how these

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<sup>25</sup> Lucero Herrera, Brian Justie, Tia Koonse, and Saba Waheed, *Worker Ownership, COVID-19, and the Future of the Gig Economy* (Los Angeles: UCLA: Institute for Research on Labor and Employment, 2020), accessed November 23, 2020, 7, <https://escholarship.org/uc/item/3h60d754>.

<sup>26</sup> Herrera, 15.

<sup>27</sup> Peter Schrag, *Paradise Lost: California’s Experience, America’s Future* (Berkeley: University of California Press, 1998), 7-23.

<sup>28</sup> Borkholder et al, *Uber State Interference*, 22-23.

companies leveraged their vast resources – built largely on employment misclassification and venture capital subsidization – to dupe the California electorate into passing the regressive Proposition 22.

We have mentioned in a previous section that pro-Proposition 22 spending totaled roughly \$200 million, ten times more than their opposition, which was made up of a coalition of TNC driver organizations, labor unions, and their grassroots and political allies. A large portion of this huge sum went to advertisement buys which bombarded California residents with a relentless onslaught of pro-initiative propaganda. According to Michelle Chen, writing in *Dissent*, “spending on Facebook ads alone topped what either major-party presidential campaign had spent in state.”<sup>29</sup> In addition, some of these advertisements were purposefully misleading, such as the faux-progressive mailer sent to Bay Area residents that was designed to appear as if it had come from a non-existent group associated with Senator Bernie Sanders.<sup>30</sup>

The TNCs also put their technology to work, flooding app interfaces with a torrent of misleading messaging that simultaneously framed Proposition 22 as a pro-driver initiative and the only thing standing between the industry and annihilation at the hands of anti-tech politicians and regulators.<sup>31</sup> This type of “clicktivism” is a well-worn tactic for TNCs, pairing with their more aggressive posturing and threats to shape the narrative around regulation.<sup>32</sup> In this sense, the “bully and bamboozle” elements of Borkholder et al’s framework operate hand in glove to produce the necessary dissonance to facilitate the consumer political mobilization discussed in the opening paragraph of this section. A clear example of this manufactured dissonance can be found in the initiative’s working title – the *Protect App-Based Drivers and Service Act* – which cast Proposition 22 as the means to deliver rideshare drivers exactly the sort of protection it was designed to prevent.<sup>33</sup>

Finally, it is important to point out the use of racialized arguments by pro-Proposition 22 groups to garner support for the initiative. In the midst of a summer defined by racial justice protests stemming from the murder of George Floyd,

<sup>29</sup> Chen, “A Blow for Labor Rights in California.”

<sup>30</sup> Mike Moffitt, “Fake progressive mailers urge yes on Uber/Lyft’s Prop. 22,” *SFGATE*, October 9<sup>th</sup>, 2020, <https://www.sfgate.com/politics/article/Fake-progressive-mailers-urge-yes-on-Uber-Lyft-15635173.php>.

<sup>31</sup> Chen, “A Blow for Labor Rights in California.”

<sup>32</sup> Borkholder et al, *Uber State Interference*, 11.

<sup>33</sup> Megan Rose Dickey, “This is the gig worker ballot initiative Uber, Lyft, Doordash and Instacart are backing,” *Tech Crunch*, October 29, 2019, <https://techcrunch.com/2019/10/29/this-is-the-gig-worker-ballot-initiative-uber-lyft-and-doordash-are-backing/>.

Breonna Taylor, and others at the hands of the police, organizations such as the NAACP California, Black Lives Matter Sacramento, Hispanic 100, and the Si Se Puede Foundation provided important endorsements for the initiative.<sup>34</sup> However, it was later revealed that an \$85,000 payment had been made to the President of the California NAACP's private consulting firm on behalf of the TNCs, which some critics framed as a quid pro quo exchange for the organization's endorsement.<sup>35</sup> This revelation was part of a larger discourse in which drivers had criticized the TNCs for their cynical deployment of Black Lives Matter (BLM) messaging.<sup>36</sup> For example, Rideshare Drivers United, a rideshare driver association, published a *No on Proposition 22* factsheet which cited statistics claiming that 70% of rideshare drivers in this country are people of color, and underscored the hypocrisy of the TNCs use of BLM talking points in their advertisements and the Proposition 22 political campaign while at the same time pushing policies that “deny their workforce the wages, benefits, and protections they deserve.”<sup>37</sup>

In his book *Toward Freedom: The Case Against Race Reductionism*, historian Touré Reed argues that a revitalized labor union movement in the United States is a crucial piece of any program seriously aimed at addressing the material racial disparities in this country, due in part to the higher wages and benefits provided to union members and to the overrepresentation of people of color in membership rolls.<sup>38</sup> Policies such as Proposition 22 lock rideshare drivers – disproportionately people of color – into independent contractor status, preventing them from the legal means to collectively organize and blocking one of the most effective tools for racial and economic justice. Additionally, they also prevent drivers from protection under important anti-discrimination protections.<sup>39</sup> As we will discuss in the final section, this is just the tip of the iceberg of a larger assault on labor protections that Proposition 22 may help to accelerate.

<sup>34</sup> Matthew Rozsa, “Rideshare drivers say Uber is co-opting anti-racist rhetoric,” Salon, September 10<sup>th</sup>, 2020, <https://www.salon.com/2020/09/10/uber-drivers-protest-oakland-black-lives-matter-co-optation/>.

<sup>35</sup> Katie Canales, “Prop 22 has courted the endorsement of California’s NAACP president – and Uber and Lyft have paid her consulting firm \$85,000 to boost the controversial measure,” Business Insider, October 21<sup>st</sup>, 2020 <https://www.businessinsider.com/uber-lyft-paid-naacp-alice-huffman-prop-22-2020-10>.

<sup>36</sup> Rozsa, “Rideshare drivers say Uber is co-opting anti-racist rhetoric.”

<sup>37</sup> Rideshare Drivers United, “No on Uber’s Prop 22: Stop Exempting Uber & Lyft from Basic Labor Laws!” Rideshare Drivers United, retrieved November 22<sup>nd</sup>, 2020, <https://drivers-united.org/p/prop22>.

<sup>38</sup> Touré Reed, *Toward Freedom: The Case Against Race Reductionism* (New York: Verso, 2020), 168-169.

<sup>39</sup> Erlich, “Construction Workers and Gig Economy.”

## LOOKING FORWARD

Unfortunately for opponents of Proposition 22, a provision written into the initiative requires that it can only be overturned by a seven-eighths majority in the state legislature, making it a nearly impossible task.<sup>40</sup> Proposition 22 is here to stay, and shortly after their victory TNC executives declared their intent to spread the model elsewhere, whether via state ballot measure, federal statute, or other means. Despite this optimism, there remain reasons to be skeptical about the long-term prospects of the TNCs, despite their victory in California. Court cases, government action, and worker demonstrations across the globe are seriously threatening the TNCs' employment classification preference, and the technology needed to replace drivers doesn't appear close to completion.<sup>41</sup> Furthermore, the TNCs' desire to export Proposition 22 won't be easy, as the initiative's win has further galvanized this already sizable grassroots opposition across the country and globe.<sup>42</sup> However, it is impossible to look at Proposition 22's victory as anything but a major victory for the TNCs and a setback for rideshare drivers in California and elsewhere, as well as their allies in the labor movement.

In addition, there are also potentially significant negative implications for workforces outside of the rideshare industry, including for blue-collar workers, public sector employees, and white-collar professionals. As Erlich point out in *Dissent*, AB 5 is likely to "have just as large an impact on more traditional industries, such as construction, trucking, hospitality, and janitorial services," which also rely on misclassifying workers in order to keep labor costs low.<sup>43</sup> Policies such as Proposition 22 may incentivize these industries to seek similar carveouts. The initiative's victory could also further incentivize the privatization of government service, as budgetary crises spur local and state government to look to save money by offloading burdensome public sector union contracts. For example, a cash-strapped jurisdiction legally obligated to balance its budget and dealing with reduced revenues and increased expenditures thanks to the COVID-19 crisis may find a significant savings on labor costs extremely attractive and elect to contract out its service provision via independent contractors. If this seems unlikely, consider that a large portion of the white-collar professionals that Google employs are classified as independent contractors, and it becomes apparent that this

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<sup>40</sup> Chen, "A Blow for Labor Rights in California."

<sup>41</sup> Press, "With Prop 22's Passage in California."

<sup>42</sup> Chen, "A Blow for Labor Rights in California."

<sup>43</sup> Erlich, "Construction Workers and Gig Economy."

particular innovation may be, as Press writes in *Jacobin*, “the future of work for us all if Silicon Valley has anything to say about it.”<sup>44</sup>

The TNCs’ campaign to overturn AB 5 – built on an escalation of their typical “barge into, buy, bully, and bamboozle” strategy of state interference – and their utilization of a business model predicated on labor arbitrage has provided a ready-made playbook for other powerful business and corporate interests to draw from. To this end – and in only a few short months since the initiative’s passing – the California economy is already feeling exactly these sorts of knock-on effects. In January of 2021, Albertsons, the second largest grocery chain in the country, laid off its entire staff of unionized delivery drivers in California and replaced them with independent contractors.<sup>45</sup> From this perspective, Proposition 22 represents a significant step towards an economy-wide circumvention of the labor rights and protections fought for and won by the labor movement during the early part of the 20<sup>th</sup> Century.

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Borkholder, Joy, Mariah Montgomery, Miya Saika Chen, and Rebecca Smith. *Uber State Interference: How TNC’s Buy, Bully, and Bamboozle Their Way to Deregulation*. National Employment Law Project and Partnership for Working Families, 2018. <https://s27147.pcdn.co/wp-content/uploads/Uber-State-Interference-How-Transportation-Network-Companies-Buy-Bully-Bamboozle-Their-Way-to-Deregulation.pdf>.

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<sup>44</sup> Press, “With Prop 22’s Passage in California.”

<sup>45</sup> Kenny Stancil, “‘Devastating Effects’ of CA Prop 22 Begin as Albertsons Stores Move to Replace Unionized Drivers With Gig Workers,” *Common Dreams*, January 05, 2021, <https://www.commondreams.org/news/2021/01/05/devastating-effects-ca-prop-22-begin-albertsons-stores-move-replace-unionized>.

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