California's Prop 22, classifying ride sharing drivers as independent contractors, is upheld but questions remain

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On July 25, 2024, the California Supreme Court unanimously upheld Proposition 22 — a 2020 initiative statute that categorically classified app-based drivers as independent contractors for purposes of California labor law, among other things — against a constitutional challenge. *Castellanos v. California*, No. S279622 (Cal.).

While the decision is a significant victory for ride sharing companies and other companies that utilize app-based drivers, many of which sponsored Prop 22, it may leave open the possibility that the Legislature could partially alter Prop 22 by including app-based drivers in the state's workers' compensation system.

As a result of the Court's decision, drivers will remain largely exempt from state wage, hour, overtime, and workers' compensation rules, which gives drivers substantial operational independence.

In *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), the California Supreme Court adopted strict standards restricting the workers who may be classified as independent contractors, as opposed to employees. In a 2019 law known as Assembly Bill 5, the California Legislature codified the *Dynamex* standards and expanded their application to most industries statewide. Under AB 5, courts held that app-based drivers, such as drivers for ride sharing and food delivery services, could not be classified as independent contractors. *See People v. Uber Techs., Inc.*, 56 Cal. App. 5th 266 (2020).

In response to *Dynamex* and AB 5, the ride sharing industry (among others) sponsored Prop. 22, which categorically exempted app-based drivers from most facets of California's labor regulations, and instead adopted a unique series of labor and wage policies specific to app-based drivers, including an earnings floor, limits on working hours, healthcare subsidies, and occupational insurance benefits.

The voters overwhelmingly approved Prop. 22 in the November 2020 general election after what was then the most expensive ballot measure campaign in state history.

After Prop. 22 took effect, a group of plaintiffs including the Service Employees International Union challenged several of Prop. 22's provisions as inconsistent with the California Constitution. The Alameda County Superior Court sustained some of those challenges, and issued a writ of mandate striking down Prop. 22 in its entirety.

In 2023, a divided panel of the California Court of Appeal reversed that decision, prompting the challengers to appeal to the California Supreme Court. *See Castellanos v. California*, 89 Cal. App. 5th 131 (2023).

A 1918 amendment to the California Constitution gives the Legislature "plenary power, unlimited by any provision of [the] Constitution, to create, and enforce a complete system of workers' compensation." Cal. Const. art. XIV, Section 4. A different provision of the state Constitution, however, provides that the Legislature can only amend or repeal a statute passed by the voters by conducting a subsequent referendum. Cal. Const. art. II, Section 10(c).

The challengers argued that Prop 22 unconstitutionally conflicted with the Legislature's "plenary" authority to create a complete workers' compensation system by removing app-based drivers from the workers' compensation system via a statute that the Legislature cannot repeal without the consent of the voters.

Ride sharing companies will avoid the substantial new costs and regulatory scrutiny that a decision restoring AB 5 would likely have created.

The California Supreme Court disagreed. The Court first held that the constitutional provision giving the Legislature "plenary power" to establish a workers' compensation system was ambiguous as to whether the voters could change a legislatively enacted workers' compensation statute via ballot measure.

In reaching this conclusion, the Court relied heavily on a prior case holding that a similar constitutional provision giving the Legislature unlimited authority to confer jurisdiction on the California Public

Utilities Commission did not clearly prevent the voters from changing the PUC's jurisdiction through the initiative process. *See Independent Energy Producers Association v. McPherson*, 38 Cal. 4th 1020 (2006).

The Court then turned to the history of the 1918 constitutional amendment giving the Legislature plenary authority to establish a workers' compensation system. The Legislature's decision to enact a mandatory workers' compensation system in 1913 spawned a number of unsuccessful constitutional challenges.

The Court interpreted the relevant legislative history as showing that the 1918 constitutional amendment was intended to definitively resolve those constitutional challenges and prevent similar challenges from arising in the future. Since the legislative history did not show that the voters intended to limit their own ability to change the workers' compensation system through the initiative process, the Court held that the workers' compensation amendment did not prevent the voters from removing app-based drivers from the workers' compensation system through Prop 22.

The Court's decision is a significant victory for the ride sharing and app-based delivery industries, as well as the large number of app-based drivers who supported Prop. 22. As a result of the Court's decision, drivers will remain largely exempt from state wage, hour, overtime, and workers' compensation rules, which gives drivers substantial operational independence. Ride sharing companies will also avoid the substantial new costs and regulatory scrutiny that a decision restoring AB 5 would likely have created.

However, the Court's decision may not be the final word on Prop 22's enforceability. The Court noted that the Legislature might be able to pass a statute that adds app-based drivers to the state's workers' compensation system without classifying them as employees.

The Court further noted that it might raise constitutional problems if the Legislature were required to submit such a statute for voter approval, given its plenary authority to enact workers' compensation laws. However, the Court declined to decide any of these issues until actually faced with a statute subjecting app-based drivers to a workers' compensation regime.

Although the California Supreme Court's decision ends the *Castellanos* litigation and makes it unlikely that the California courts will ever fully strike down Prop 22, it remains unclear whether the Legislature will attempt to add app-based drivers to the state's workers' compensation system.

The Legislature may not be inclined to experiment further in this area, given the voters' recent (and overwhelming) rejection of AB 5. However, if the Legislature passes a future law attempting to add app-based drivers to the workers' compensation system, that decision would likely trigger further constitutional challenges and more uncertainty.

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