THE HILL

Will voters side with the contin exploitation of gig workers?

BY WILLIAM B. GOULD IV, OPINION CONTRIBUTOR — 10/15/20 12:00 PM EDT

Just In...

Demings mulling statewide Florida run in 2022
CAMPAIGN — 35S AGO

Vermont firearms training center owner says he won't comply with order to shut down
STATE WATCH — 5M 42S AGO

Meet the first Black transgender woman to run for the Missouri House
CHANGING AMERICA — 8M AGO

The good, the bad and the truly horrifying potential of CRISPR technology
OPINION — 8M 57S AGO

Pompeo fuels 2024 speculation under shadow of Trump
CAMPAIGN — 11M 26S AGO

California officer put on leave after punching handcuffed woman twice in the face
STATE WATCH — 11M 41S AGO

US embassies can fly the pride flag again, in reversal of Trump-era rule
CHANGING AMERICA — 18M 27S AGO

India experiences shortage of oxygen amid COVID-19 spike

© Getty Images

For the past half century, employers have increasingly classified their workers as independent contractors. It is said that approximately 8 percent of American workers use independent work as their primary activity, a 22 percent increase since 2001.

More pronounced in trucking, product delivery work like Federal Express, it first emerged in transportation where it is more difficult to monitor worker behavior. But there are other obvious incentives: no social security; no minimum wage or overtime; no unemployment compensation; no sick pay; family leave or workers' compensation; no reimbursement for travel expenses; registration; insurance; licensing and automobile depreciation; and no protection under anti-discrimination law. A growing precariat, disproportionately Black, brown and immigrants, competing with one another was particularly easy for the new on-demand economy to manipulate.

The gig economy, which initially meant jazz musicians moving from club to club, caught on with the Silicon Valley investing class, which claimed that they were simply connecting workers, as Uber, Lyft and Doordash did, with an app to customers. The companies saved around 30 cents on the dollar, adopting a scheme that immediately became imperiled by a 2018 California Supreme Court ruling, and later codified by the legislature last year. This created a presumption that drivers were employees because of the Supreme Court's initial adoption of the ABC standard that characterized drivers and others as employees if they met one of the

following criteria: one, they were under the employer's control; two, they performed work which was part of the company's central business; and three, were not independent tradespeople.

The court and legislature took this step because they saw misclassification of workers as a substantial contributor to growing inequality, as well as a raid on the public treasury. One study estimated that Uber and Lyft would have paid $413 million into California's unemployment insurance fund between 2014 and 2019 if their drivers had been employees.

In the wake of these developments, companies like Uber and Lyft immediately howled in protest over the law, refused to obey it altogether, litigated extensively, arguing in bizarre fashion that they were not in the transportation business. Defiance produced a delay until the California attorney general, authorized to enforce the law by the new statute, brought suit in May and produced a strong trial court decision concluding that the companies must meet their "day of reckoning."

The transportation network companies (TNCs), already successful in characterizing their drivers as independent contractors before the anti-worker Trump NLRB and Department of Labor, doubled down on an already-planned ballot proposition of the kind with which California is continually besieged, producing the most expensive ballot campaign (nearly $200 million and counting) in the state's history and outgunning all opponents by 50:1 — though as of publishing, the electoral result is unclear. But clearly the proposition is one of the best bets for Uber and Lyft to win, given the likelihood of success in the California courts for the attorney general.

California's Proposition 22 pitch is essentially threefold: one, the flexibility accorded drivers which makes it possible for them to devise their own schedule will be lost, as will many of their jobs, and consumer prices would increase; two, Proposition 22 would provide the drivers with some employee-like benefits; three, if the companies cannot have it their way, they will leave California for greener pastures. Although there are new suitors like Alto and others waiting in the wings, one cannot be entirely sure of the future industry prospects.

But the new legal framework doesn't abolish flexibility — indeed, because demand inevitably fluctuates on any given day, the companies will always have to retain part-time as well as full-time drivers. Independent studies estimate that the new model will produce a 5 to 10 percent increase in prices at most, though Uber and Lyft maintain that the price increase could be tenfold!

The benefits for the drivers are markedly inferior to those of employees — only about 50 percent of reimbursements allowed by the IRS and medical benefits, which are about 70 to 80 percent of California's version of Obamacare for the most senior workers — nothing else will be provided.

On The Money: White House sees GOP infrastructure plan as starting...

Overnight Health Care: Pelosi pushes for drug pricing measure | South...

Finally, beyond Proposition 22, the companies have one other arrow in their quiver — the federal courts. Already successful before the court of appeals in Seattle, invalidating that city's labor legislation for passenger

ride-hauling drivers, there is always the United States Supreme Court. That tribunal, it is to be recalled, fashioned out of whole cloth the conclusion that union security or "fair-share" agreements are unconstitutional. This week Supreme Court nominee Amy Coney Barrett defended her dissenting opinion in support of the proposition that the right to bear arms is more fundamental than the right to vote. To paraphrase Frank Sinatra, "the world is upside down today" and Uber and Lyft are banking on the idea that "anything goes."

Meanwhile, on Nov. 3, the voters will have a fairly clear-cut choice — continued exploitation of workers without benefits and below the minimum wage (Yes), or some measure of dignity for those who have been left behind in the age of inequality.

William B. Gould IV, Emeritus professor at Stanford Law School and former chairman of the National Relations Board. He is the author of, "Primer on American Law, (Sixth edition)" and "Japan's Reshaping of American Labor Law (1984)."

TAGS **AMY CONEY BARRETT** **CALIFORNIA** **GIG ECONOMY** **INDEPENDENT CONTRACTORS** **FULL-TIME WORKERS** **CALIFORNIA PROPOSITION 22** **2020 ELECTION** **UBER** **LYFT** **DOORDASH**

THE HILL 1625 K STREET, NW SUITE 900 WASHINGTON DC 20006 | 202-628-8500 TEL | 202-628-8503 FAX