

Court of Appeal Puts Rideshare Companies Back in the Driver's Seat

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Proposition 22 continues its journey through the California courts. As background, in 2018 the California Supreme Court adopted a new test to determine whether a worker was an employee or independent contractor in its [Dynamex](#) holding. Under the test, a worker is determined to be an employee unless: (a) the worker is free from the company's control; (b) the work performed is not in the company's usual course of business; (c) the worker is customarily engaged in an independent trade or business. This new test eliminated independent contractor status for many, as it was significantly more stringent than the previous *Borello* test. The Legislature later codified the ABC test in AB 5.

In response to the ABC test, a ballot initiative – Prop. 22 – was placed on California's November 2020 ballot. Prop. 22 – if passed – would render certain gig-economy workers exempt from California's independent contractor laws – including the ABC Test, while providing eligible workers [certain benefits](#) (including a healthcare subsidy, minimum earnings of 120% of minimum wage, compensation for vehicle expenses, and insurance). In essence, Prop. 22 would exempt app-based drivers who (1) provide delivery services or (2) provide transportation services through an online platform. In November 2020, California voters passed Prop. 22 by nearly 3 Million votes – a 58% to 42% margin. See [GT Alert](#).

Shortly after Prop. 22's passage, drivers and the Service Employees International Union challenged its constitutionality in Alameda County Superior Court and sought an injunction prohibiting enforcement of the law. In August 2021, an Alameda County Superior Court judge found Prop. 22 unconstitutional for three reasons: (1) it unlawfully limited the Legislature's ability to legislate regarding workers' compensation; (2) it unlawfully limited the Legislature's ability to enact related legislation; and (3) it violated the California Constitution's "single-subject rule" that generally prohibits ballot measures "embracing more than one subject."

The state of California and Prop. 22 proponents, including Protect App-Based Drivers and Services, appealed the Superior Court decision that struck down Prop. 22. On March 13, 2023, the Court of Appeal [reversed the trial court](#) and held that Prop. 22 is mostly lawful and enforceable. The Court rejected the Superior Court's finding that Prop. 22 infringed on the Legislature's "unlimited" plenary

power over workers' compensation (found in Article XIV, Section 4 of the Constitution). The Court of Appeal reasoned that reference to the Legislature's power inherently includes "the people's reserved right to legislate through the initiative power," and thus did not infringe on the Legislature's plenary power. Next, the Court rejected the Superior Court's finding that Prop. 22 violated the "single-subject rule," which prohibits initiative measures "embracing more than one subject." The Court of Appeal reasoned that though Prop. 22 contained various provisions, each was related to the "overarching single subject [that] is regulation of the relationships between app-based drivers and network companies," and thus did not violate the single-subject rule. The Court of Appeal *agreed* with the Superior Court that Prop. 22's limitations on amendments violate separation of powers principles, but determined that this provision could be severed, leaving Prop. 22's remaining provisions, including the exemptions from the ABC Test, largely intact. This ruling paves the way for Prop. 22 to remain in effect, allowing eligible app-based drivers to work as independent contractors.

The Court of Appeal's decision is a relief for app-based rideshare and food delivery companies, and their drivers classified as independent contractors. This is likely to be appealed to the California Supreme Court, which may well take up the issue.

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