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How to Manage the Wolf in the Fold: A Government-Focused Approach to Regulatory Capture in the Platform Economy Comparing California with British Columbia

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Scholarly work on regulatory capture in the platform economy accounts for the political role and power wielded by app-based firms, which aim to reform the existing legal environment to favor their low-cost labor business models. This Article adds to the literature by shifting the focus to government actors, the role of narrative in communicating with the public, and institutional constraints which may hamper the government's ability to provide a cogent rationale for opposing or implementing legal change. The Article's central contribution is underscoring the government's role in facilitating or preventing regulatory capture. To that end, it illuminates the state's capacity for de-standardizing work—making work more precarious and insecure for workers—or preventing the degradation of workers and working conditions. The Article compares two North American jurisdictions considered pro-worker—California (US) and British Columbia (CA) – and examines government reactions to the regulatory challenges posed by app-based transportation and delivery firms.

The authors first introduce a typology of government functions and tools that can either stabilize or weaken labor standards. Two theoretical lenses then assist in interrogating government actions and regulatory outcomes: 1) discursive institutionalism, which highlights the role and power of ideas and institutions in public policy creation; and 2) decent work, the human rights concept emphasizing, among other things, the promotion of fair wages, safe and healthy working conditions, and the right to organize and bargain collectively. Despite confronting similar regulatory challenges, the study discerns significant differences in government actions, communication, and regulatory outcomes in California and British Columbia. Regarding app-based workers, the latter is moving towards recognizing decent work while the former drifts away from it. These findings underscore the government's pivotal role in protecting or undermining decent work, an important insight as platform firms test the resilience of existing labor standards around the world.

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[R]ecent legislation has threatened to take away the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours Protecting the ability of Californians to work as independent contractors . . . using app-based rideshare and delivery platforms is necessary[†]
– CAL. BUS. & PROF. CODE § 7449(d) & (e) (West 2025)

[T]he Ministry of Labour . . . initiated a public engagement to review and propose appropriate employment standards and other protections for app-based ride-hail and food-delivery workers What was heard during the engagement . . . will inform our efforts to make work more reliable and less precarious .^{††}
– B.C. MINISTRY OF LABOUR, APP-BASED RIDE-HAIL & FOOD-DELIVERY WORK IN BRITISH COLUMBIA: WHAT WE HEARD 2 (2023)

INTRODUCTION

There is a curious provision in California’s *Business and Professions Code*, which seems anomalous given the state’s reputation as a pro-worker

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[†] CAL. BUS. & PROF. CODE § 7449(d) & (e) (West 2025).

^{††} B.C. MINISTRY OF LAB., APP-BASED RIDE-HAIL & FOOD-DELIVERY WORK IN BRITISH COLUMBIA: WHAT WE HEARD 2 (2023) [hereinafter WHAT WE HEARD], <https://engage.gov.bc.ca/app/uploads/sites/121/2023/04/What-We-Heard-Report-Gig-Workers-1.pdf>.

jurisdiction.¹ The Protect App-Based Drivers and Services Act² warns that recent legislative action threatens flexible working conditions for app-based rideshare and delivery workers,³ whose freedom to labor as independent contractors must be protected.⁴ The Protect App-Based Drivers and Services Act's statements are not only legally inaccurate since no law imposes scheduling rigidity and mandatory hours on employees,⁵ but the Act also wrongly and implicitly portrays the California Legislature as acting to harm the state's app-based drivers. Moreover, the proposition that independent contractor status will protect the drivers is risible. The fissuring of corporate responsibility for workers is a strategy employed to hold down labor costs; poor wages and working conditions generally follow in its wake.⁶

California first presented this misleading argument to Californians in the *Text of Proposed Laws*, a government document that accompanied information about "Proposition 22," the 2020 ballot initiative that became the *Protect App-Based Drivers and Services Act*.⁷ Yet the government did not draft the text or the provisions of the new law. Rather, the drafters were Uber and several other app-based rideshare and delivery companies.⁸ Predictably, Proposition 22, proposed as a measure to improve app-based drivers' working conditions, condemned many drivers to sub-minimum wages.⁹ Additionally, the drivers' status as independent contractors precludes their access to the rights and social safety net protections of employees, including overtime pay, "the right to organize, civil rights

¹ See generally Matthew Fritz-Mauer, *Lofty Laws, Broken Promises: Wage Theft and the Degradation of Low-Wage Workers*, 20 EMP. RTS. & EMP. POL'Y J. 71, 76–94 (2016) (discussing California's early workers' rights laws and modern reputation as "employee-friendly").

² CAL. BUS. & PROF. CODE §7448 et seq. (West 2025).

³ *Id.* at §7449(d).

⁴ *Id.* at §7450(a).

⁵ See Charlotte S. Alexander, *Employees, Independent Contractors, and the Flexibility False Choice*, 44 BERKELEY J. EMP. & LAB. L. 281, 313 (2023) (noting that employment and labor law are silent on the subject of work schedules).

⁶ See generally DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* 19–20 (2014) (exploring how the fissuring of corporate responsibility leads to workplace accidents and low worker's wages).

⁷ CALIFORNIA SEC'Y OF STATE, *TEXT OF PROPOSED LAWS 30* (2020) [hereinafter *TEXT OF PROPOSED LAWS*].

⁸ Kate Andrias, *The Perils and Promise of Direct Democracy: Labour Ballot Initiatives in the United States*, 34 KING'S L.J. 260, 263 (2023).

⁹ See KEN JACOBS, MICHAEL REICH, TYNAN CHALLENGOR & AIDA FARMAND, U.C. BERKELEY LAB. CTR., *GIG PASSENGER AND DELIVERY DRIVER PAY IN FIVE METRO AREAS 25* (2024) (concluding that "a majority of delivery drivers and passenger drivers in California . . . earned less than the employee-equivalent applicable minimum wage"). Many drivers earn less than the state's minimum wage because they are only compensated for "engaged time," which is defined as "from when an app-based driver accepts a rideshare request or delivery request to when the app-based driver completes that rideshare request or delivery request." CAL. BUS. & PROF. CODE §7463(j)(1) (West 2025). Drivers are not compensated for time spent waiting for a request or driving back from a completed request. One study found that average uncompensated time was about thirty percent of the app-based drivers' working time. JACOBS, REICH, CHALLENGOR & FARMAND, *supra* at 9.

protections,”¹⁰ and workers’ compensation.¹¹ The law also attempted to bar the drivers from unionizing.¹² Proposition 22’s example of legalized worker exploitation has been analyzed as a case of regulatory capture.¹³ This Article fills a gap in the literature by examining a government’s role in that process.

Providing a contrast is British Columbia (“BC”), a Canadian province, which currently, like California, is considered “pro-worker.”¹⁴ Confronting the similar challenge of regulating app-based drivers’ working conditions, BC, in 2022, initiated a public engagement that included gathering stakeholders’ perspectives and generating reports.¹⁵ The province then amended BC’s Employment Standards Act and Workers Compensation Act,¹⁶ and promulgated regulations, which went into effect in September 2024.¹⁷ BC’s government remained the dominant force not only of the law-making process, but of communicating to the public the empirical findings and policy rationale upon which substantive legal changes were based.¹⁸

Indeed, in its communications, the provincial government asserted its primary role as protecting workers from precarity.¹⁹ To that end, the government’s self-described first phase of reform classifies BC’s app-based drivers as employees, albeit with fewer rights and protections as compared with most employees.²⁰ Nevertheless, unlike their Californian counterparts,

¹⁰ Ronit Levine-Schnur & Moran Ofir, *Who Shares the Sharing Economy?*, 32 S. CAL. INTERDISC. L.J. 593, 602 (2023) (citing Muhammad M. Rashid, *Exploitation in a Disruptive and Unjust Gig Economy*, 7 J. ECON. BIBLIOGRAPHY 163, 166 (2020)).

¹¹ See Veena B. Dubal, *Economic Security & the Regulation of Gig Work in California: From AB5 to Proposition 22*, 13 EUR. LAB. L.J. 51, 55–56 (2022) [hereinafter *From AB5 to Proposition 22*] (noting that following the passage of Proposition 22, drivers lost their entitlement to worker’s compensation).

¹² See *infra* Part II.B.1 (discussing Proposition 22’s attempts to bar workers from unionizing due to their status as independent contractors).

¹³ See, e.g., Andrew Elmore, *Confronting Structural Inequality in State Labor Law*, 83 MD. L. REV. 1192, 1224–25 (2024) (characterizing Proposition 22 as a form of legislative nullification).

¹⁴ During the time period in which BC undertook legal regulation of the employment status of app-based drivers, the province’s New Democratic Party (NDP) formed the majority government. See *infra* notes 145–159 and accompanying text. The NDP is historically considered “the party of labour,” with a platform geared to bettering conditions for workers. David P. Ball, *Gains and Pain: The Stakes for Workers in the BC Election*, THE TYEE (Oct. 16, 2024), <https://thetyee.ca/News/2024/10/16/Stakes-Workers-BC-Election>.

¹⁵ WHAT WE HEARD, *supra* note ††, at 2; B.C. MINISTRY OF LAB., PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS FOR APP-BASED RIDE-HAIL AND FOOD-DELIVERY WORKERS IN BRITISH COLUMBIA (2023) [hereinafter PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS].

¹⁶ Labour Statutes Amendment Act, 2023, Bill 48, 4th Sess., 42nd Parl. (B.C. 2023).

¹⁷ See Press Release, B.C. News, Fair Pay, Basic Protections Coming for Gig Workers (June 13, 2024), <https://news.gov.bc.ca/releases/2024LBR0011-000900> (reporting 2024 “regulations to provide fairness, minimum-wage measures and basic protections for app-based ride-hailing and delivery workers in British Columbia”).

¹⁸ See *infra* Part II.B.2 (citing multiple BC government communications regarding government actions intending to lead to increased fairness for gig workers).

¹⁹ See *infra* notes 313–324, 351 and accompanying text for examples where BC government leaders stated their intentions to protect from precarious work.

²⁰ See *id.* (discussing how the first phase includes a classification of the drivers as “employees”).

BC's app-based drivers are covered by occupational safety and health law and eligible for workers compensation in case of work-related injuries.²¹ Additionally, a bargaining unit of Uber drivers in Victoria, BC has recently been certified; the drivers are represented by the United Food and Commercial Workers Canada.²²

This Article juxtaposes the cases of two pro-worker, North American jurisdictions, which seemed to share similar political starting points, yet ended with very different regulatory outcomes. We add to scholarly perspectives on the platform economy by placing the focus on government actors, the role of narrative in communicating with the public, and institutional constraints which may hamper the government's ability to provide a cogent rationale for opposing or implementing legal change. Our Article's central contribution underscores the role the government plays in facilitating or preventing regulatory capture. We are interested in the state's role in de-standardizing work—making work more precarious and insecure for workers—or preventing the degradation of workers and working conditions.

Regulatory capture theory commonly examines the actions of well-established industries which neutralize or shape formal legal rules or regulation to their advantage and to the detriment of the public.²³ Scholars writing about capture by app-based firms like Uber note differences between traditional regulatory capture and capture as practiced by new entrants like platform firms.²⁴ This more recent literature often focuses on the platform firms' responsibility for subpar regulatory outcomes, which disadvantage workers.²⁵ In this Article, we take a different approach.

More specifically, our analysis of regulatory capture shifts the focus to the functionaries of the regulatory state. This shift comports with the normative assertion that government should serve as a guardian of decent work.²⁶ To assess fulfillment of that role, we set forth our typology of

²¹ See *infra* note 298 and accompanying text (discussing how BC's app-based drivers are covered by health and safety laws).

²² See *infra* notes 309–311 and accompanying text (discussing the recent certification of a bargaining unit).

²³ See George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 4 (1971) (noting that large, as opposed to small, industries solicit coercive government powers); Ernesto Dal Bó, *Regulatory Capture: A Review*, 22 OXFORD REV. ECON. POL'Y 203 (2006) (defining regulatory capture as when special interests impact state intervention).

²⁴ See, e.g., Ruth Berins Collier, V.B. Dubal & Christopher L. Carter, *Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States*, 16 PERSPS. ON POL. 919 (2018) (noting that platforms like Uber do not conform to the existing theory of regulatory capture).

²⁵ See, e.g., Levine-Schnur & Ofir, *supra* note 10 (focusing on stakeholders who are rewarded for taking advantage of regulatory systems); *From AB5 to Proposition 22*, *supra* note 11 (highlighting platform companies' role in the passage of Proposition 22).

²⁶ Susan Bisom-Rapp & Urwana Coiquaud, *The Role of the State Towards the Grey Zone of Employment: Eyes on Canada and the United States*, 58 PAPERS IN POL. ECON. 1, 2–3 (2017). For definitions of “decent work,” see generally Tony Dobbins, Xuebing Cao, Anne Green, Paul Johnstone &

government functions and tools that can be used to stabilize or destabilize labor standards.²⁷ The typology considers three central functions which structure government action vis-à-vis working people and enumerates seven tools by which the government effectuates or fails to execute those functions.²⁸ The model also anticipates that the state may cede its regulatory power to other players or even aggressively dismantle rights and protections taken for granted by workers for decades.²⁹

Two analytical lenses assist our study in interrogating government actions and regulatory outcomes: (1) discursive institutionalism and (2) decent work. Discursive institutionalism examines the role and power of ideas and institutions in public policy creation.³⁰ We assess how the state and various stakeholders framed ideas about legal reform and its effects not only in public statements, but also in key government documents produced for the public prior to substantive regulatory change.³¹ Additionally, decent work is our conceptual measuring stick for evaluating government actions, discourse, and regulatory outcomes. Deploying these analytical concepts, we demonstrate how some governments normalize the de-standardization of work and provide an opening for precarious work to take root. This highlights the role government can play in effectuating or forestalling regulatory capture of the workplace and further illuminates how law and public policy are made.

This Article proceeds as follows. Part I provides the framework for the project. We situate our study by setting forth: (1) recent scholarly accounts of how platform firms attempt and sometimes achieve regulatory capture,³² (2) our typology of the functions of and tools used by governments to either shore up or weaken conditions at work,³³ and (3) the theoretical precepts of discursive institutionalism and decent work.³⁴

Part II contains our case studies of California and BC. In addition to discussing the political context, the substantive law adopted, and the institutions mobilized,³⁵ we pay particular attention to three government

Will Foster, *Conceptualizing Decent Work: An Explorative Study of Decent Work in England's Midlands Region*, 46 POL'Y STUD. 560, 560 (2024) (defining “decent work” as productive work accompanied by “freedom, equity, security and human dignity”); Susanti Saragih, Jann Hidajat Tjakraatmadja & Andika Putra Pratama, *Decent Work in a Digital Age: A Comprehensive Review of Research and Theory*, 11 COGENT BUS. & MGT. 2371552 (2024) (noting that income from “decent work” can break poverty cycles).

²⁷ See *infra* Part I.B.

²⁸ See *infra* Part I.B.

²⁹ See *infra* Table 1.

³⁰ See Vivien A. Schmidt, *Discursive Institutionalism: The Explanatory Power of Ideas and Discourse*, 11 ANN. REV. POL. SCI. 303, 304 (2008) (defining discursive institutionalism as a tool used to give meaningful context to ideas for both policy and non-policy purposes).

³¹ See *infra* Part II.B.2.

³² See *infra* Part I.A.

³³ See *infra* Part I.B.

³⁴ See *infra* Part I.C.

³⁵ See *infra* Part II.

documents. Regarding California, we examine relevant provisions of a government document published during the political battle over Proposition 22—the *Voter Information Guide*.³⁶ The *Voter Information Guide* provided information to voters about whether app-based drivers’ status should be codified as independent contractors and summarized proposed changes to their conditions of work. Regarding BC, we reference two reports published by British Columbia’s Ministry of Labour: (1) *What We Heard*; and (2) *Proposing Employment Standards and Other Protections for App-Based Ride-Hail and Food-Delivery Workers in British Columbia*.³⁷ These reports were part of the Ministry’s engagement on the issue, which supported a mandate priority for the provincial government. We conclude Part II by examining whether our case studies are examples of government assistance in regulatory capture or government defense of decent work.³⁸

I. OUR FRAMEWORK: EXAMINING CAPTURE BY ILLUMINATING THE GOVERNMENT’S ROLE

Our project framework is set forth in three Sections. Although our ultimate observations are not limited to regulatory capture by app-based firms, the first Section discusses scholarly work about regulatory capture in the sharing or gig economy.³⁹ Next is our typology of how governments reinforce or undermine standard, well-protected forms of employment.⁴⁰ Finally, we will introduce the theory of discursive institutionalism and the concept of decent work, which are the analytical filters we employ in evaluating our case studies of California and British Columbia.⁴¹

A. *Regulatory Capture in the Platform Economy*

Regulatory capture takes place when well-established, regulated industries influence government regulators to structure law and policy to benefit industry rather than consumers or the public interest.⁴² This concept helps identify the parties who win or who lose in regulatory battles, who

³⁶ See *infra* Part II.B.

³⁷ See *infra* Part II.B.

³⁸ See *infra* Part II.C.

³⁹ See *infra* Part I.A.

⁴⁰ See *infra* Part I.B.

⁴¹ See *infra* Part I.C.

⁴² DANIEL CARPENTER & DAVID A. MOSS, PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCES AND HOW TO LIMIT IT 13 (2014) (“*Regulatory capture* is the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself.”) (emphasis in original); Stigler, *supra* note 23, at 4 (“[T]he problem of regulation is the problem of discovering when and why an industry (or other group of like-minded people) is able to use the state for its purposes, or is singled out by the state to be used for alien purposes.”).

influences outcomes and how, and what rules structure the playing field for the parties.⁴³

As formulated in George J. Stigler's seminal work, capture stands in contrast to regulation "for the protection and benefit of the public at large or some large subclass of the public."⁴⁴ Capture is driven in part by information-asymmetries between companies and government functionaries (legislators or regulators), which enable industry to manipulate regulation to its advantage.⁴⁵ Traditional tools for influencing regulatory outcomes involve material interests such as financial resources, and include campaign contributions and the potential for well-compensated industry employment at the conclusion of the government functionary's stint in the public sector.⁴⁶ The latter, known as the revolving doors phenomenon, increases the chances of government functionaries identifying with the interests of the industry.⁴⁷ The goal of industry, known as rent-seeking, undermines the public interest.⁴⁸

Recent literature on capture in the platform economy identifies a different pattern. This scholarly work accounts for the political role and power wielded by platform companies, new entrants aiming to reform the existing regulatory environment to favor their business models.⁴⁹ This conception is the reverse of Stigler's theory, which focused on the power of incumbents to mold regulation for their benefit.⁵⁰

Collier, Dubal, and Carter demonstrate how new industry entrants effectuate regulatory capture in two phases.⁵¹ Using Uber as an example, they note that the platform's first goal is to render existing regulatory regimes irrelevant by disregarding existing regulations, for example, those of the taxi industry.⁵² After this, as regulators in relevant jurisdictions react, Uber tries to ensure that emergent regulatory measures cohere to its business model.⁵³ That model calls for "low prices, high driver supply (with no labor

⁴³ Wendy Y. Li, *Regulatory Capture's Third Face of Power*, 21 SOCIO-ECON. REV. 1217, 1220 (2023) ("To use a sports metaphor, the first face of power is measured through the winner of the game, and the second face of power can be understood as the referee. The third face of power is the field, the rulebook, and agreement that there is even a game at all.").

⁴⁴ Stigler, *supra* note 23, at 3.

⁴⁵ See Dal Bó, *supra* note 23, at 210 (noting that "asymmetric information is the source of regulatory discretion, making capture possible").

⁴⁶ *Id.* at 212.

⁴⁷ See *Id.* at 214–15 (discussing scholarly treatments of the revolving doors phenomenon).

⁴⁸ See Richard L. Hasen, *Lobbying, Rent-Seeking, and the Constitution*, 64 STAN. L. REV. 191, 229 (2012) ("The social ill of rent-seeking is that it causes a decline in overall social wealth . . . as resources are devoted to capturing and keeping government benefits, rather than being put to productive use.").

⁴⁹ See, e.g., Collier, Dubal & Carter, *supra* note 24 (describing a "pattern of 'disruptive regulation'").

⁵⁰ Stigler, *supra* note 23, at 4.

⁵¹ Collier, Dubal & Carter, *supra* note 24, at 920.

⁵² *Id.* at 922–23.

⁵³ *Id.* at 920, 931.

regulation), and consumer trust.”⁵⁴ This new capture model is called “challenger capture.”⁵⁵

A platform company’s success in achieving its goals may vary across different legal jurisdictions, and thus, the new entrant may achieve capture, in either a strong or weak sense,⁵⁶ or instead simply adapt to the existing regulatory structure while, perhaps, minimally altering it.⁵⁷ Yet the platform companies’ influence in their encounters with the state are undeniable, and their strategy in response to regulation is notable. The latter is described as “contentious compliance,” and is defined as “simultaneously adapting to regulations while continuing to fight” to modify them.⁵⁸ Assisting platforms’ contentious compliance efforts is consumer devotion; consumers enjoy the ease of obtaining goods and services via their smartphones.⁵⁹ Indeed, appealing directly to consumers in political battles over potential regulation is a strategy deployed by platform firms.⁶⁰

Biber, Light, Ruhl, and Salzma (Biber et al.) note that challenger companies use the innovation they introduce—smartphone technology and a novel business form—to create a “policy problem”—a disjunction between the regulatory system governing incumbent companies and the new entrant, which claims it should not be subject to the rules of the existing industry.⁶¹ These authors characterize Uber’s policy disruption as an “[e]nd-run” because the platform argues that its innovations set it apart from the incumbent taxi industry and that industry’s regulatory system.⁶² While Biber

⁵⁴ *Id.* at 920.

⁵⁵ *Id.*

⁵⁶ See CARPENTER & MOSS, *supra* note 42, at 11–12. These authors “distinguish . . . between strong and weak capture by asking whether the degree of capture vitiates the public interest-serving characteristics of the regulatory policy.” *Id.* at 11, n.20. In strong capture, the public interest is so compromised that either deregulation or “replacement of the policy and agency in question” should result. *Id.* at 11. With weak capture, there are still benefits that accrue to the public from regulation, but the benefits are nonetheless deemed to be compromised. *Id.* at 12.

⁵⁷ See Jimena Valdez, *The Politics of Uber: Infrastructural Power in the United States and Europe*, 17 REGUL. & GOVERNANCE 177, 185–90 (2023) (examining Uber’s experience in New York City (US), Madrid (Spain), and Berlin (Germany) and noting that the platform’s power and success is shaped by the applicable jurisdiction’s existing regulatory system and Uber’s strategic response to it).

⁵⁸ *Id.* at 177; see also Urwana Coiquaud & Lucie Morissette, *The Politics of Uber in Quebec. A Discursive Institutional Study*, 61 INDUS. RELS. 91, 91–92, 105–06 (2021) (highlighting Uber’s history of contentious compliance as an effort to alter regulatory schemes, specifically regulations of the taxi industry in Quebec).

⁵⁹ Pepper D. Culpepper & Kathleen Thelen, *Are We All Amazon Primed? Consumers and the Politics of Platform Power*, 53 COMPAR. POL. STUD. 288, 290 (2020).

⁶⁰ *Id.* at 306.

⁶¹ Eric Biber, Sarah E. Light, J.B. Ruhl & James Salzman, *Regulating Business Innovation as Policy Disruption: From the Model T to Airbnb*, 70 VAND. L. REV. 1561, 1580 (2017) (emphasis omitted).

⁶² *Id.* at 1581 (emphasis omitted). As Uber recently testified in a Massachusetts employee misclassification trial, “Uber Technologies Inc. is a platform that provides services for two types of customers: drivers and riders” Allie Reed, *Uber Executive Says App Is a Service for Drivers, Not Employer*, BLOOMBERG L. NEWS (May 29, 2024, 4:01 PM),

et al. note that end-run policy disruption may still merit some kind of regulation,⁶³ some critics see the platform's argument as "the myth of technological exceptionalism," which is nothing more than an attempt to exempt the new entrant from existing regulations.⁶⁴

Importantly, the platform companies' strategic moves vis-à-vis the existing regulatory system are an intentional part of their business plan. Pollman and Barry argue that companies like Airbnb and Uber are "regulatory entrepreneurs" which "make[] changing the law a material part of [their] business plan[s]."⁶⁵ Regulatory entrepreneurs exploit legal gray areas, actions which legitimize their challenges to the existing regulatory framework; they consciously attempt to deconstruct or modify existing regulatory parameters in order to be profitable.⁶⁶ New entrants aim for very fast growth—described as "growing too big to ban"—and mobilizing platform users to assist in political battles to reform the law.⁶⁷ In this way, the challengers acquire new legitimacy, shape their companies' legal environment, and unseat incumbent political actors from traditional industries. While it may be possible to see virtues in this regulatory entrepreneurship, Pollman and Barry caution that the platforms are motivated by profit and self-interest, which will not necessarily correspond to the public interest.⁶⁸

Regulatory intervention by platform companies must be judged by the outcomes it produces. For example, in its relationship with its drivers, Uber is hostile to traditional labor and employment laws, which protect and provide rights to employees. Uber therefore aims to create secondary regulatory regimes conforming to the company's low-cost labor business model.⁶⁹ Proposition 22 in California, which classifies drivers as independent contractors, is an example,⁷⁰ as is the Digital Platform Workers' Rights Act ("DPWRA") of 2022 in Ontario, which neglects classifying the

https://www.bloomberglaw.com/bloomberglawnews/litigation/XCVRL1S000000?bna_news_filter=litigation#jcite. According to the testimony of an Uber executive, this "technology company," which owns no vehicles, merely matches riders with drivers and cannot be considered the employer of the latter. *Id.*

⁶³ Biber, Light, Ruhl & Salzman, *supra* note 61, at 1582.

⁶⁴ See, e.g., ALEX ROSENBLAT, *UBERLAND: HOW ALGORITHMS ARE REWRITING THE RULES OF WORK* 33–34 (2018) (noting that platform companies assume that the laws applying to their competitors do not apply to them because they are so-called "technology companies"); V.B. Dubal, *Winning the Battle, Losing the War?: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, 2017 WIS. L. REV. 739, 749–52 (2017) [hereinafter *Losing the War*] (arguing that the platform economy is merely building upon older forms of worker exploitation).

⁶⁵ Elizabeth Pollman & Jordan M. Barry, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383, 384–85 (2017).

⁶⁶ *Id.* at 397–400.

⁶⁷ *Id.* at 400–06.

⁶⁸ *Id.* at 448.

⁶⁹ See Collier, Dubal & Carter, *supra* note 24, at 921 (describing a model of capture in which Uber is subject to weaker regulations than the taxi industry).

⁷⁰ See *infra* Part II.B.1 (explaining that Proposition 22 set legal standards for app-based drivers by classifying them as independent contractors).

drivers at all.⁷¹ While platform firms' actions are explored extensively in the literature, the role of government functionaries in facilitating or preventing subpar outcomes is underexamined. Below we set forth our approach to analyzing the ways in which the government either strengthens standard employment relationships and working conditions or weakens them.

B. *State Functions and Tools for (De)stabilizing Employment*

To illustrate how the government contributes to or prevents the decline of the standard employment relationship (“SER”)⁷² and facilitates or rebuffs regulatory capture, we offer our typology.⁷³ The typology articulates three central government functions regarding the protection of standard employment. These functions are required to create and maintain an environment where decent work and human resiliency can thrive.⁷⁴ Specifically, the state acts as a: (1) “describer and definer of change;” (2) “protector of substantive rights;” and (3) “insurer against social risk and inequality.”⁷⁵

The model also identifies seven tools government uses to effectuate these functions. How the state uses or fails to deploy these tools reveals whether the government is acting to stabilize standard employment and conditions of work or allowing vulnerable forms of work to proliferate. Finally, the typology accounts for outcomes including governments that cede regulatory authority to third parties or aggressively disassemble or destroy regulation and the institutional structures that support it.⁷⁶

Our typology setting forth the state functions and their related tools appears in Table 1.

⁷¹ Digital Platform Workers' Rights Act, 2022, S.O. 2022, c. 7, s. 1 (Can.). See Eric Tucker, *Ambiguities and Absences: Occupational Health and Safety Regulation of Platform-Mediated Work in Ontario, Canada*, 1 J. WORK HEALTH SAFETY REGUL. 30, 48 (2023) (noting that “the Act does not define the legal relation between platform operators and platform workers As a result, legal ambiguity about whether platform operators are employers of digital platform workers, either as employees or independent contractors, remains”).

⁷² The standard employment relationship (“SER”) emerged after World War II and spread throughout developed economies. Jeremy Pilaar, *Assessing the Gig Economy in Comparative Perspective: How Platform Work Challenges the French and American Legal Orders*, 27 J.L. & POL'Y 47, 50 (2018). Often associated with male workers in unionized sectors, this direct relationship between an employer and an employee is characterized by exchanging work for wages, labor performed “according to pre-set schedules, and the expectation of long-term, full-time employment.” *Id.* at 51. Robust benefits, opportunities for promotion, and wage and salary increases are often linked to the SER. *Id.* The SER began a continuing decline in advanced economies starting in the 1980s. *Id.*

⁷³ In our first elaboration of the typology, we compared conditions in Canada and the US, and Quebec and California. Bisom-Rapp & Coiquaud, *supra* note 26.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁷⁶ For examples of destruction of institutional structures that support regulation, see Celine McNicholas, Samantha Sanders, Josh Bivens, Margaret Poydock & Daniel Costa, *100 Ways Trump Has Hurt Workers in His First 100 Days*, ECON. POL'Y INST. (Apr. 25, 2025), <https://files.epi.org/uploads/301487.pdf>.

Table 1: Bisom-Rapp and Coiquaud's Typology on the State's Role in (De)Standardizing Work

The state as the describer and definer of change		The state as the protector of substantive rights			The state as the insurer against social risk and inequality	
State can carefully define terms, keep track of trends or fail to do so.	State can create alternative forms of work to SER or fail to do so.	State can promote collective worker voice or fail to do so.	State can effectively enforce the law or fail to do so.	State can prohibit certain forms of work or limit their duration or fail to do so.	State can mandate equal treatment between the SER and non-standard work or fail to do so.	State can extend social protection to alternative forms of work or fail to do so.
State cedes regulatory power to other players	State cedes regulatory power to other players			State cedes regulatory power to other players		

Government can act antithetically to its proper role as a guardian of decent work:
The state may aggressively dismantle regulations and regulatory structures.

The state may use two tools in its role as the describer and definer of change. First, sound regulation should be evidence based. To this end, the state must collect, analyze, and disseminate information about how work and the labor market function.⁷⁷ Since the standard employment relationship is the relationship most likely to secure decent work for those who labor, the government should monitor the extent to which non-standard, insecure work is present in the economy. Second, the state may choose to create alternative forms of work to standard employment endowing these categories with some of the same or inferior sets of rights and protections.⁷⁸ For example, many kinds of non-standard work exist in the U.S., including temporary work, part-time work, leased work, and independent contracting.⁷⁹ Use of this tool by the state can increase worker precarity, but where certain protections or rights are built into the alternative forms of work, the state's actions may be better than no action at all.

Three tools are identified with the government's role as the protector of the substantive rights of workers. First, the state can promote collective worker voice or fail to do so.⁸⁰ Whether and how the government acts here is salient in terms of international labor standards since freedom of

⁷⁷ Bisom-Rapp & Coiquaud, *supra* note 26, at 3–5.

⁷⁸ *Id.* at 5–6.

⁷⁹ See generally Peter H. Cappelli & JR Keller, *A Study of the Extent and Potential Causes of Alternative Employment Arrangements*, 66 INDUS. & LAB. RELS. REV. 874 (2013) (examining the implications and potential causes of non-standard work in U.S. establishments).

⁸⁰ Bisom-Rapp & Coiquaud, *supra* note 26, at 6–9.

association and collective bargaining are fundamental labor rights.⁸¹ Particularly important is whether non-standard workers are provided with and are able to use collective bargaining rights to better their working conditions. Next, once protective labor and employment laws are on the books, the state's enforcement capacity is a potent tool.⁸² Regulatory capture is a particular threat to the state's capacity for enforcement. Adequate funding for meaningful administration of the law is essential, as is access to fair and transparent venues for dispute resolution.⁸³ Finally, to slow the growth of precarious work, the state can prohibit forms of alternative work or specify temporal limits for non-standard work.⁸⁴

The third government function is as the insurer against social risk and inequality. We identify two tools associated with this role, which can be used to make work more secure. One tool is to mandate equal treatment between standard and non-standard work.⁸⁵ For example, the state may mandate comparable wages and working conditions for full-time and part-time work. Second, the state can extend forms of social insurance, such as unemployment insurance and workers compensation, to alternative forms of work.⁸⁶

In our view, the state contributes to the growth of non-standard work and increasing precariousness through action and inaction—in short, by acting in contrary ways. For example, sometimes the state prosecutes companies for misclassifying employees as independent contractors, making work more secure, but at the same time, through neglect, fails to collect data and define trends, leaving workers in new industries vulnerable and regulators unable to see problems that need to be addressed.⁸⁷ By consulting the typology, one can evaluate the actions of a specific government and draw conclusions about its contribution to the promotion of decent work.

Sometimes, the state cedes regulatory power to third parties. This does not necessarily create outcomes antithetical to decent work. For example, the Nordic model of wage setting eschews statutory minimum wages.⁸⁸

⁸¹ See generally Int'l Lab. Conference, *Realizing Decent Work in the Platform Economy*, at 30, ILC 113/Report V(1) (2024) (noting that both The Freedom of Association and Protection of the Right to Organise Convention as well as The Right to Organise and Collective Bargaining Convention apply to all workers).

⁸² Bisom-Rapp & Coiquaud, *supra* note 26, at 9.

⁸³ *Id.* at 11.

⁸⁴ *Id.* at 12–13.

⁸⁵ *Id.* at 13–14.

⁸⁶ *Id.* at 14–15; see also Miriam A. Cherry, *Employee Status for “Essential Workers”*: The Case for Gig Worker Parity, 55 LOY. L.A. L. REV. 683, 721–26 (2022) (noting that gig workers were given access to unemployment benefits and paid sick leave during the pandemic).

⁸⁷ Bisom-Rapp & Coiquaud, *supra* note 26, at 2.

⁸⁸ Jens Kristiansen, *Labour Market and Collective Agreements*, in 73 IUS GENTIUM: COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE, NORDIC LAW IN EUROPEAN CONTEXT 153, 153–54 (Pia Letto-Vanamo, Ditlev Tamm & Bent Ole Gram Mortensen eds., 2019) (“[C]ollective agreements normally stipulate wages and working conditions . . . in a specific sector [thus] . . . legislation plays a more limited role . . .”).

Instead, Nordic countries depend on strong trade unions and employer associations to set robust minimum wages on a sectoral level through collective bargaining.⁸⁹ However, as we will see in the case of California's actions toward app-based drivers in the transportation and delivery sectors, ceding regulatory power to third parties can result in sub-par wages and working conditions.⁹⁰

Finally, the typology accounts for the actions of governments that aggressively dismantle regulation and seek to harm workers and working conditions. Such governments clearly act against decent work principles.⁹¹

Our case studies of California and British Columbia in Part II demonstrate the role government can play in advancing or undercutting decent work, and rebuffing or enabling regulatory capture. Our examination employs discursive institutionalism and decent work as analytical lenses. Below we set forth the theoretical precepts of both.

C. *Discursive Institutionalism and Decent Work as Perspectives on Capture*

Firms use a variety of strategies to effectuate regulatory capture. While material means are undoubtedly important,⁹² cognitive means, including generating and disseminating ideas, are also effective instruments for policy change.⁹³ Discursive institutionalism is a powerful interpretive framework for analyzing the role of ideas in policy change over time.⁹⁴ We employ discursive institutionalism to analyze the way government actors in California and BC communicated with the public about possible legal

⁸⁹ Antti Kauhanen & Roope Uusitalo, *Introduction* to NORDIC ECON. POL'Y REV. 6 (Jul. 5, 2025), <https://pub.norden.org/nord2025-001/nord2025-001.pdf> (“[N]one of the Nordic countries has a statutory minimum wage, as minimum compensation is already set in the union contracts.”).

⁹⁰ See *infra* Part II (addressing Uber's infiltration of the regulatory scheme in California, specifically through Proposition 22).

⁹¹ The hostile actions towards the federal workforce by the current Trump administration fall into this category. See McNicholas, Sanders, Bivens, Poydock & Costa, *supra* note 76, at 11 (providing examples of the Trump administration's actions toward the federal workforce).

⁹² “Material means” include campaign contributions and the promise to government functionaries of future employment. See Dal Bó, *supra* note 23, at 212 (providing examples of material means by which firms influence regulation, such as bribes and other political payments); Katie J. Wells, Declan Cullen & Kafui Attoh, *Inside Uber's Political Machine*, N.Y. REV. BOOKS (May 9, 2024), <https://www.nybooks.com/online/2024/05/09/inside-uber-political-machine> (noting that Uber spends heavily on lobbying, political contributions, and in strategically hiring well-connected former government officials, including high level former Obama administration officials).

⁹³ Uber, for example, has paid noted economists who drafted favorable reports containing ideas that the firm hoped would influence regulation. Wells, Cullen & Attoh, *supra* note 92 (noting that the late Princeton University economist Alan Krueger, who was President Obama's Chairman of the Council of Economic Advisors, was enlisted to draft a study, which was “marred by unsubstantiated claims and methodological problems . . .”). For a critique of Krueger and Hall's study, see Janine Berg & Hannah Johnston, *Too Good to Be True? A Comment on Hall and Krueger's Analysis of the Labor Market for Uber's Driver-Partners*, 72 INDUS. LAB. RELS. REV. 39 (2019).

⁹⁴ See generally Schmidt, *supra* note 30 (explaining that discourse can be an important tool used to give meaningful context to ideas and change them for both policy and non-policy purposes).

reform, and the extent to which they adopted or rebuffed the discourse of the platforms. We also reference discursive institutionalism in assessing the substantive outcomes for app-based drivers in California and BC.

Discursive institutionalism focuses on the role and power of ideas, and that of institutions in public policy creation. Ideas are assertions about the world⁹⁵ that assist people in interpreting “economic, social and political phenomena.”⁹⁶ Regarding public policy, ideas provide interpretive frameworks for understanding policy problems and possible solutions.⁹⁷ Discursive institutionalism posits that it is through discourse—debates and interchange of ideas—that ideas enter the political realm.⁹⁸ Actors with ideational power can affect others’ “normative and cognitive beliefs”⁹⁹ and trigger policy change when they successfully advocate for their ideas to the detriment of other actors.¹⁰⁰ While ideas can trigger policy change, however, institutions act as a mediating force, channeling the effectiveness of those ideas. Without a close examination of the institutional environment, especially the political environment, the success or failure of an idea cannot be assessed.

Béland and Cox note that the formation of political coalitions is a primary way in which ideas impact policy change.¹⁰¹ Policy entrepreneurs strategically employ novel ideas—so-called “coalition magnets”—to attract people and groups that are diverse in nature: “coalition magnets” are often effective because they are either polysemic or ambiguous, and are thus enticing to people or groups who might in other circumstances have dissimilar concerns.¹⁰²

In different countries, however, one may see the same policy entrepreneur at the center of different discursive flashpoints or battles.¹⁰³ Marengo and Seidl, analyzing the regulatory responses to Uber in eight European countries, note that the digitalization of work is “talked and thought about in very different ways in different countries”—for example, as a labor law or tax law problem—and that “institutions influence the terms on which political struggles are fought.”¹⁰⁴

⁹⁵ CRAIG PARSONS, HOW TO MAP ARGUMENTS IN POLITICAL SCIENCE 96 (2007).

⁹⁶ Daniel Béland & Robert Henry Cox, *Ideas as Coalition Magnets: Coalition Building, Policy Entrepreneurs, and Power Relations*, 23 J. EUR. PUB. POL’Y 428, 430 (2016).

⁹⁷ Craig Parsons, *Ideas and Power: Four Intersections and How to Show Them*, 23 J. EUR. PUB. POL’Y 446, 447 (2016).

⁹⁸ See Coiquaud & Morissette, *supra* note 58, at 94.

⁹⁹ Martin B. Carstensen & Vivien A. Schmidt, *Power Through, Over and in Ideas: Conceptualizing Ideational Power in Discursive Institutionalism*, 23 J. EUR. PUB. POL’Y 318, 321 (2016).

¹⁰⁰ *Id.* at 322.

¹⁰¹ Béland & Cox, *supra* note 96, at 429.

¹⁰² *Id.* at 432.

¹⁰³ Kathleen Thelen, *Regulating Uber: The Politics of the Platform Economy in Europe and the United States*, 16 PERSPS. POL. 938, 939 (2018).

¹⁰⁴ Matteo Marengo & Timo Seidl, *The Discursive Construction of Digitalization: A Comparative Analysis of National Discourses on the Digital Future of Work*, 13 EUR. POL. SCI. REV. 391, 392 (2021).

This attention to institutions is crucial because institutions provide the rules or context in which ideas can be communicated.¹⁰⁵ Institutions prescribe the mechanisms or levers available to policy entrepreneurs, such as parliamentary rules or the election laws structuring the ballot initiative process, which are necessary for ideas to be effective.¹⁰⁶ Thus, discursive institutionalism “brings together ideas, discourse, and institutions . . . by considering how ideas influence the political and policy making context within a given set of institutional rules and dynamics.”¹⁰⁷ Institutions, through their structures, procedural rules, and mechanisms, catalyze or inhibit the ability of actors to articulate a discourse to make ideas effective.

In terms of assessing regulatory outcomes, however, we also employ the concept of decent work, and argue that when faced with regulatory capture, the government should act defensively to preserve or attain decent work. “Decent work” is a term first introduced in 1999 by the International Labour Organization (ILO), and then refined over time by the ILO and others.¹⁰⁸ Although definitions vary, Janice Bellace describes decent work as “the conditions which must exist for workers to be able to enjoy the human rights guaranteed [to] them”¹⁰⁹ We use the concept to interrogate the outcomes of legal reforms for app-based drivers in California and BC.

Rombouts and Zekić define decent work succinctly.¹¹⁰ They note that “decent work means that workers’ fundamental rights as human beings need to be respected, including their right to organize and bargain collectively, as well as their right to adequate work safety conditions and adequate income.”¹¹¹ Their definition is tied to the ILO’s 2008 *Declaration on Social Justice for a Fair Globalization*,¹¹² which articulates its Decent Work Campaign’s four strategic objectives.¹¹³ Specifically, the goals of the ILO and its member states are to (1) promote sustainable employment; (2) develop and enhance social protection, including safe and healthy working

¹⁰⁵ See generally Vivien A. Schmidt, *Reconciling Ideas and Institutions Through Discursive Institutionalism*, in *IDEAS AND POLITICS IN SOCIAL SCIENCE RESEARCH* 47, 47–48 (Daniel Béland & Robert Henry Cox eds., 2011) (explaining how institutions play an important role in the discussion of ideas in the political sphere).

¹⁰⁶ See Coiquaud & Morissette, *supra* note 58, at 92 (arguing that ideas are more effective when communicated through an institutional backdrop).

¹⁰⁷ Mary Coulas, *Discursive Institutionalism and Food Policy Research: The Case Study of Canada’s National Food Policy*, 6 *FRONTIERS COMM’N*, 749027, 5 (2021).

¹⁰⁸ See Saragih, Tjakraatmadja & Pratama, *supra* note 26, at 1 (providing history of the term “decent work” and explaining its meaning within various fields of study).

¹⁰⁹ Janice R. Bellace, *Achieving Social Justice: The Nexus Between the ILO’s Fundamental Rights and Decent Work*, 15 *EMP. RTS. & EMP. POL’Y J.* 5, 27 (2011).

¹¹⁰ S.J. Rombouts & N. Zekić, *Decent and Sustainable Work for the Future? The ILO Future of Work Centenary Initiative, the UN 2030 Agenda for Sustainable Development, and the Evolution of the Meaning of Work*, 24 *UCLA J. INT’L L. & FOREIGN AFFS.* 317, 348–49 (2020).

¹¹¹ *Id.*

¹¹² International Labour Conference, *Declaration on Social Justice for a Fair Globalization* (June 10, 2008), 6–7 [hereinafter *ILO Declaration on Social Justice*].

¹¹³ *Id.* at 9–11.

conditions and fair wages; (3) promote social dialogue and tripartism; and (4) respect, promote, and realize the fundamental principles and rights at work.¹¹⁴ These goals are considered “inseparable, interrelated and mutually supportive”¹¹⁵

Digital work presents a challenge to achieving decent work insofar as it may cause labor deskilling, financial insecurity, a dearth of benefits, stress, and an increased workload.¹¹⁶ Susanti Saragih and her co-authors reviewed 110 studies of decent work in the digital economy and identified three significant themes of that research.¹¹⁷ One theme was the transformative properties of digital work, with concern about a “shift towards a more precarious employment landscape, characterized by job insecurity, temporary positions, and lack of benefits;” a second theme was “[i]nequitable compensation;” and a third involves “[w]ork fulfilment,” which includes the impact of poor working conditions on worker health and well-being.¹¹⁸

We evaluate government actions vis-à-vis decent work in two ways. First, we consider substantive outcomes and the extent to which law and regulation promote or prevent precarious working typified by low wages, inadequate work safety, and prohibition of the right to unionize and collectively bargain. Second, referencing principles of discursive institutionalism, we consider the actions and discourse of government actors. In other words, we examine how aggressively government actors attempted to prevent regulatory capture or promote decent work, and the kind of discourse they employed.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 11; see also Gillian MacNaughton & Diane F. Frey, *Decent Work, Human Rights, and the Millennium Development Goals*, 7 HASTINGS RACE & POVERTY L.J. 303, 321 (2010) (quoting *ILO Declaration on Social Justice*). Notably, at the ILO’s 2025 International Labour Conference (ILC), a resolution was adopted, which committed the ILO to place the matter of “decent work in the platform economy” on the agenda for the 2026 ILC. International Labour Conference, *Plenary Sitting: Outcome of the Work of the Standard-Setting Committee on Decent Work in the Platform Economy*, ILC.113/Record No. 6C (July 3, 2025), <https://www.ilo.org/resource/record-proceedings/ilc/113/s%C3%A9ance-pl%C3%A9ni%C3%A8re-r%C3%A9sultat-des-travaux-de-la-commission-normative-sur-le-An-ILO-Convention-and-Recommendation-on-Decent-Work-in-the-Platform-Economy-presumably-will-be-adopted-during-the-2026-ILC-International-Labour-Conference-Outcome-of-the-Standard-Setting-Committee-on-Decent-Work-in-the-Platform-Economy-Proposed-Resolution-and-Conclusions-Submitted-to-the-Conference-for-Adoption>, ILC.113/Record No. 6A (June 12, 2025), <https://www.ilo.org/resource/record-proceedings/ilc/113/outcome-committee-decent-work-platform-economy-proposed-resolution-and>; International Labour Conference, *Report of the Standard-Setting Committee on Decent Work in the Platform Economy*, ILC.113/Record No. 6B (Rev.1) (July 30, 2025), <https://www.ilo.org/resource/record-proceedings/ilc/113/report-standard-setting-committee-decent-work-platform-economy>.

¹¹⁶ See generally Saragih, Tjakraatmadja & Pratama, *supra* note 26, at 2 (describing the concerns relating to digitalization in organizations degrading decent work).

¹¹⁷ *Id.* at 1.

¹¹⁸ *Id.* at 8–9.

Below, we turn to our case studies of California's and British Columbia's reactions to regulatory confrontation with platform firms over the status and working conditions of app-based drivers.

II. A GOVERNMENT-FOCUSED, DISCURSIVE INSTITUTIONALIST ANALYSIS OF REGULATORY CAPTURE

Our analysis unfolds in three parts. First, it considers the initial regulatory approaches to app-based transportation in California and British Columbia. These formative regulatory efforts did not resolve important labor issues facing app-based drivers. Nonetheless, they reveal the governments' perspectives on managing the emergence and challenges of ridesharing as an economic activity.

Next, we detail recent political circumstances and the institutional contexts involved in addressing the labor issues associated with app-based driving. These regulatory efforts aimed to clarify the drivers' status as employees or independent contractors. They were also billed as ways to improve the drivers' working conditions. Specifically, we focus on the conditions leading to the adoption of California's Assembly Bill 5 in 2019 and Proposition 22 in 2020,¹¹⁹ and British Columbia's Labour Statutes Amendment Act, 2023 and two subsequent regulations in 2024.¹²⁰

Finally, we analyze the discursive strategies of both governments and the substantive outcomes achieved to determine whether these case studies should be considered instances of regulatory capture or government defense of decent work.

A. *Early Regulatory Encounters with the App-Based Platform Economy*

App-based transportation launched in San Francisco in 2012, and, despite some initial resistance, politicians and regulators quickly took actions to limit regulatory interference with the new San Francisco-based firms, while engaging in discourse protective of them.¹²¹ For example, San Francisco Mayor Edwin Lee (Democratic Party), who maintained a strong pro-technology agenda, blocked the imposition of municipal taxi regulations on the platform companies.¹²² He also encouraged the pro-business California Public Utilities Commission ("CPUC"), which regulated

¹¹⁹ See *infra* Part II.B.1 (discussing California's Assembly Bill 5 and Proposition 22).

¹²⁰ See *infra* Part II.B.2 (discussing British Columbia's Labour Statutes Amendment Act and other regulations).

¹²¹ See Onesimo Flores & Lisa Rayle, *How Cities Use Regulation for Innovation: The Case of Uber, Lyft and Sidecar in San Francisco*, 25 *TRANSP. RSCH. PROCEDIA* 3756, 3757–59 (2017) (arguing the policy response to ridesharing's 2012 emergence in San Francisco resulted from two politicians who took steps to protect the ridesharing firms).

¹²² *Id.* at 3763; see Associated Press, *San Francisco Mayor Edwin Lee Dies Suddenly at 65*, *CHI TRIB: NATIONAL NEWS* (Aug. 22, 2019, 6:58 AM), <https://www.chicagotribune.com/2017/12/12/san-francisco-mayor-edwin-lee-dies-suddenly-at-65> (noting that Lee was a member of the Democrat Party).

limousine services, to assert jurisdiction over the formative industry.¹²³ Importantly, Lee’s ideational framing and discourse about the tech sector was in harmony with the platform firms’ assertions that they should not be subject to existing regulation. He advocated for supporting tech startups’ “growth, modernizing our laws, and confronting emerging policy issues and concerns.”¹²⁴

In 2013, the CPUC issued the first U.S. state-wide rules governing app-based transportation firms.¹²⁵ Representing a light regulatory touch, the California rules covered public safety, required driver background checks, and required the platforms to carry sufficient accident insurance.¹²⁶ Announcing the rules, the CPUC referenced public “safety as a primary objective,” along with “the development of this nascent industry” and fostering “driver[] and consumer[. . . choice . . .]”¹²⁷ Over 100 supporters of Peers, a lobbying organization for sharing economy firms, attended the CPUC hearing and cheered at the commissioners’ 5-0 vote, evidencing the early alignment between regulators and industry.¹²⁸ Notably, the CPUC’s rules did not cover labor matters, including the drivers’ status vis-à-vis the platform firms.¹²⁹ The driver classification issue—whether drivers were employees or independent contractors—was left to be resolved imperfectly by misclassification suits, which proved to be slow and difficult mechanisms for achieving economic justice.¹³⁰

Gavin Newsom (Democratic Party), then California’s Lieutenant Governor, evidenced ideational framing and discourse providing the clearest example of California’s early approach to its app-based firms:

¹²³ Flores & Rayle, *supra* note 121, at 3764.

¹²⁴ Neal Gorenflo, *San Francisco Announces Sharing Economy Working Group*, SHAREABLE (Mar. 27, 2012) (quoting Mayor Edwin Lee), <https://www.shareable.net/san-francisco-announces-sharing-economy-working-group>.

¹²⁵ Marc Lifsher, *California Becomes First State in Nation to Regulate Ride-Sharing*, L.A. TIMES (Sept. 19, 2013, 12:00 AM), <https://www.latimes.com/business/la-xpm-2013-sep-19-la-fi-mo-state-regulators-ok-ridesharing-20130919-story.html>; Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 58. This action preempted municipal rules that otherwise might have been promulgated. *Id.*

¹²⁶ Anthony Ha, *California Regulator Passes First Ridesharing Rules, a Big Win for Lyft, SideCar, and Uber*, TECHCRUNCH (Sept. 19, 2013), <https://techcrunch.com/2013/09/19/cpuc-ridesharing-regulations>.

¹²⁷ Press Release, Cal. Pub. Utils. Comm’n, CPUC Establishes Rules for Transportation Network Companies (Sept. 19, 2013), <https://docs.cpuc.ca.gov/publisheddocs/published/g000/m077/k132/77132276.pdf>.

¹²⁸ Tomio Geron, *California Becomes First State to Regulate Ridesharing Services Lyft, Sidecar, UberX*, FORBES (Sept. 19, 2013, 6:27 PM), <https://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx>.

¹²⁹ Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 58.

¹³⁰ See generally Dubal, *Losing the War*, *supra* note 64, at 747 (highlighting the difficulties of using misclassification suits to win awards for drivers); Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 58 (noting that misclassification class action suits filed on behalf of drivers were ultimately stymied by the US Supreme Court’s *Epic Systems* decision, ruling that arbitration agreements that prohibited class actions, which many drivers had signed, were lawful).

As these start-ups modernize the way we travel, it is up to lawmakers to create a regulatory framework that protects consumers while ensuring there is adequate flexibility for innovative and creative transportation solutions While it isn't always easy to transition out of old regulatory models, government can demonstrate real leadership and make a difference by supporting these emerging technologies. We must resist the urge to go backward by creating laws that further entrench the status quo and stifle innovation and consumer choice. As transportation services evolve, so should our transportation regulatory structure.¹³¹

Thus, California officials and regulators, in their actions and discourse, embraced and protected the platform firms. The language of innovation, flexibility, creativity, and modernization was used to justify exceedingly modest regulation. The state showed greater concern for consumers than workers and allowed the firms' low-cost labor business model to function.

In contrast, British Columbia's actions and discourse evidenced skepticism about the novelty of app-based firms when, in 2012, they appeared in Vancouver.¹³² Minister of Transportation Mary Polak (B.C. Liberal, a center-right party) noted regarding Uber, "[W]e must ensure [this service] is fair and that it does not detract from existing businesses that are licensed to operate."¹³³ The province's default position was to apply existing regulations to Uber's activities.¹³⁴ BC first considered Uber to be a limousine service, arguing that in Vancouver the company should be subject to a mandatory minimum fare of seventy-five dollars per trip.¹³⁵

¹³¹ Gavin Newsom, Opinion, *Viewpoints: Don't Stifle Innovation by Over-Regulating Uber*, MODESTO BEE (June 17, 2014, 8:14 AM), [hereinafter *Don't Stifle Innovation*] <https://www.modbee.com/latest-news/article3166463.html>. See Cheyanne M. Daniels, *Newsom: 'Democratic Party of Old' is No More*, POLITICO (Nov. 9, 2025, 10:41 AM), <https://www.politico.com/news/2025/11/09/newsom-democratic-party-of-old-no-more-00643876> (noting that Gavin Newsom is a member of the Democratic Party).

¹³² See Isamara M. Vasconcelos & Peter V. Hall, *Ride-hailing Applications in Vancouver, Canada: Representation, Local Empowerment and Resistance*, 30 CAN. J. URB. RSCH. 53, 54 (2021) (noting early resistance to ride-sharing platforms and stating that a local company opened a claim with the Passenger Transportation Board immediately after Uber arrived in Vancouver).

¹³³ Press Release, B.C. News, *Safe, Fair Passenger Transportation a Priority*, (Nov. 23, 2012) [hereinafter *Safe, Fair Passenger Transportation*], <https://news.gov.bc.ca/releases/2012TRAN0113-001871>. See *MLA: Hon. Mary Polak*, LEGIS. ASSEMBLY OF B.C.: MEMBERS OF THE LEGIS. ASSEMBLY, <https://www.leg.bc.ca/members/39th-Parliament/Polak-Mary> (last visited Jan. 21, 2026) (noting that Mary Polak is a member of the BC Liberal Party).

¹³⁴ John Cairncross, Jonathan D. Hall & Craig Palsson, *VancUber: The Long-Run Effect of Ride-hailing on Public Transportation, Congestion, and Traffic Fatalities*, 58 CANADIAN J. ECON., *2 (forthcoming 2025) https://www.craigpalsson.com/assets/WP%20Vancouver_and_Uber.pdf.

¹³⁵ *Safe, Fair Passenger Transportation*, *supra* note 133.

Uber's response was to exit the city.¹³⁶ By 2014, BC conceptualized Uber as a taxi service.¹³⁷ In addition to the province's threat of fines,¹³⁸ measures were taken by the Vancouver City Council to preempt any attempts by the platforms to install themselves illegally. These steps included a 2014 moratorium on new taxi permits, a decision that was renewed until October 2017.¹³⁹

BC's firm posture towards the platform firms persisted, even through a change in government. In 2016, the governing BC Liberal Party (center right) made what was described as a "U-turn on Uber,"¹⁴⁰ with Premier Christy Clark basing the change on free market principles, and Transportation Minister Todd Stone asserting that "ride-sharing apps like Uber and Lyft are the way of the future."¹⁴¹ In fact, a key plank of the party's platform in the spring 2017 provincial elections was legalizing ride-hailing by December 2017.¹⁴² The strategy seemingly failed electorally,¹⁴³ and a no-confidence vote followed, which ushered in the allied New Democratic Party ("NDP," a democratic socialist party) and the Green Party (a party promoting ecological sustainability and social justice) as the minority government.¹⁴⁴ The NDP achieved majority status in 2020.¹⁴⁵ As a result of

¹³⁶ See Austin Zwick, Zachary Spicer & Mischa Young, *Moving Ideas? The News Media's Impact on Ridehailing Regulation in Canadian Cities*, 46 J. URB. AFFS. 356, 365 (2024) (stating Uber stopped all operations and pulled out of Vancouver once the city imposed a seventy-five dollar minimum fare on all ridehailing trips).

¹³⁷ See The Canadian Press, *Uber Vancouver to Get Undercover Government Checks to Enforce Taxi Regulations*, CBC (Nov. 3, 2014, 10:31 AM), <https://www.cbc.ca/news/canada/british-columbia/uber-vancouver-to-get-undercover-government-checks-to-enforce-taxi-regulations-1.2821811> (reporting on Uber's dissatisfaction with BC's taxi classification). Indeed, the provincial government warned that undercover transit officers were ready to identify and impose fines on any "taxi-like service" found driving without a taxi license. *Id.*

¹³⁸ *Id.*

¹³⁹ See CITY OF VANCOUVER, RESPONSE TO COUNCIL MOTION ON CITY ACTION TO ENSURE INNOVATIVE, INCREASED TAXI SERVICE 2 (2015) <https://council.vancouver.ca/20150324/documents/a4.pdf> (extending the 2014 moratorium); Zwick, Spicer & Young, *supra* note 136, at 365 (stating the moratorium was operative until October 2017 when the government created a committee to investigate the impacts of ridehailing).

¹⁴⁰ Michael Smyth, *Smyth: Christy Clark's Government Makes a U-turn on Uber*, PROVINCE (Jan. 21, 2016), <https://theprovince.com/news/local-news/smyth-christy-clarks-government-makes-a-u-turn-on-uber>.

¹⁴¹ *Id.*

¹⁴² Joanne Lee-Young & Rob Shaw, *Uber Vancouver: B.C. Government Announces Support for Ride-hailing Services*, VANCOUVER SUN (Mar. 7, 2017), <https://vancouversun.com/news/local-news/uber-vancouver-bc-government-announces-support-for-ride-sharing>.

¹⁴³ Charlie Smith, *Election Results Suggest Christy Clark Misread Popularity of Uber*, GEORGIA STRAIGHT (May 11, 2017, 10:59 AM), <https://www.straight.com/news/909061/election-results-suggest-christy-clark-misread-popularity-uber#>.

¹⁴⁴ REUTERS, *No-Confidence Vote for British Columbia Liberals Delivers Blow to Pipeline Project*, GUARDIAN (June 30, 2017, 10:51 AM), <https://www.theguardian.com/world/2017/jun/30/british-columbia-vote-liberals-new-democrats-pipeline-canada>.

¹⁴⁵ Rob Shaw, *B.C. Election Results: B.C. NDP Win Historic Majority Government*, VANCOUVER SUN (Oct. 25, 2020), <https://vancouversun.com/news/politics/bc-election/bc-election-results-main-story>.

the change in the governing party, the platforms were unable to benefit from the BC Liberal party's change in discourse and disposition.

The new provincial government took a slow, methodical approach, preferring extensive study to promulgating legislation.¹⁴⁶ Recognizing the need for expert opinion, in October 2017, the government hired a consultant to write a report on modernizing the taxi industry to prepare for eventually legalizing ride-sharing in BC.¹⁴⁷ Transportation Minister Claire Trevena (NDP) promised that the consultant's expertise would "help us deliver a made-in-BC approach to ride-sharing that will keep people safe, and work for all regions of the province."¹⁴⁸ She cautioned that it was necessary to move carefully and implement a "ride-sharing system . . . that is fair for workers and businesses, fair for customers, and safe for everyone."¹⁴⁹ The report was completed in June 2018.¹⁵⁰

Meanwhile, in November 2017, the BC Legislative Assembly authorized a committee to prepare a report on the potential for ridesharing.¹⁵¹ The report, released in February 2018, concluded that ridesharing firms should be allowed "to operate in British Columbia within a provincial regulatory regime."¹⁵² No position was taken on the relationship between the firms and their drivers. Instead, the report recommended monitoring company practices and suggested "that the Ministry of Labour provide . . . drivers with information about their responsibilities and obligations as independent contractors and how this differs from an employer-employee arrangement."¹⁵³

Speaking after the release of both reports, and about the province's perceived delay in authorizing ridesharing, Transportation Minister Trevena characterized the legalization of ridesharing as complicated.¹⁵⁴ Trevena stressed the need for first "modernizing the taxi industry and improving our

¹⁴⁶ Scholars note that the city of Vancouver also took a "slow meticulous regulatory approach" to allowing ride-hailing. See, e.g., Zwick, Spicer & Young, *supra* note 136, at 365.

¹⁴⁷ Press Release, B.C., *Expert Hired to Consult with Taxi Industry and Help Develop Made-in-B.C. Solution* (Oct. 16, 2017, 2:35 PM), [hereinafter *Expert Hired*] <https://news.gov.bc.ca/releases/2017TRAN0260-001759> (announcing hire of consultant).

¹⁴⁸ *Id.*; see also *MLA: Claire Trevena*, LEGIS. ASSEMBLY OF B.C.: MEMBERS OF THE LEGIS. ASSEMBLY, <https://www.leg.bc.ca/members/38th-Parliament/Trevena-Claire> (last visited Jan. 21, 2026) (noting that Mary Polak is a member of the NDP).

¹⁴⁹ *Expert Hired*, *supra* note 147.

¹⁵⁰ HARA ASSOCS., *MODERNIZING TAXI REGULATION* (2018) (prepared for Ministry of Transportation and Infrastructure).

¹⁵¹ See SELECT STANDING COMMITTEE ON CROWN CORPORATIONS, TRANSPORTATION NETWORK COMPANIES IN BRITISH COLUMBIA, at iii (2d Sess. 41st Parliament 2018) (discussing the work the Committee prepared and unanimously adopted).

¹⁵² *Id.*

¹⁵³ *Id.* at 9.

¹⁵⁴ Matthew Lazin-Ryder, 'There Really Isn't a Delay,' *Transportation Minister Says of Ride-Hailing Hold Ups*, CBC (July 22, 2018, 3:00 PM) (quoting Transportation Minister Claire Trevena), <https://www.cbc.ca/news/canada/british-columbia/there-really-isn-t-a-delay-transportation-minister-says-of-ride-hailing-hold-ups-1.4756721>.

legislation so it both modernizes the taxi industry and enables ride-sharing.”¹⁵⁵ Regarding the impatience of the platform firms, she noted that if they wished, the platforms could do business in BC under current tax regulations, which they deemed “too stringent.”¹⁵⁶ It was not until November 2018 that provincial legislation approving ridesharing was passed.¹⁵⁷ In July 2019, regulations were finally issued, and then those regulations were implemented several months later in September.¹⁵⁸ In January 2020, ridesharing services came into effect.¹⁵⁹

Thus, in British Columbia, while provincial authorities were initially resistant, even after committing to legalizing ridesharing, the government took time to examine the issues and consider all stakeholder concerns. In particular, the concerns of the taxi industry—historically strong, organized, and united—were important to the discourse.¹⁶⁰ Those concerns were amplified by the Indo-Canadian community, which is both active in the taxi sector and highly politically engaged.¹⁶¹ This community exerted significant political weight to slow the entry of platform firms, notably, by effectively demanding the continuation of the moratorium on taxi permit issuance in Vancouver until 2017.¹⁶² Unlike California, BC government authorities emphasized local stakeholders’ “collective needs” over the platform firms’ “disruptive, external and entrepreneurial” appeals.¹⁶³

As Transportation Minister Trevena had asserted, the BC government aimed to establish a “Made-in-B.C.” regulatory framework aligned with community values.¹⁶⁴ To that end, as Premier John Horgan (NDP) noted at the time, it was important to “strike a balance” that moves regulatory change

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Alexander Tabascio & Shauna Brail, *Governance Matters: Regulating Ride Hailing Platforms in Canada’s Largest City-Regions*, 66 CANADIAN GEOGRAPHER 278, 288 (2022).

¹⁵⁸ *Id.*

¹⁵⁹ See Aarian Marshall, *Vancouver Wants to Avoid Other Cities’ Mistakes with Uber and Lyft*, WIRED (Feb. 1, 2020, 7:00 AM), <https://www.wired.com/story/vancouver-wants-avoid-other-cities-mistakes-uber-lyft> (suggesting that Vancouver was the last major city in North America to get ride-hailing services when platforms launched in January 2020); Roshini Nair, *Vancouver’s Long and Winding Road to Ride-Hailing*, CBC (Jan. 25, 2020, 8:00 AM), <https://www.cbc.ca/news/canada/british-columbia/timeline-uber-vancouver-1.5439522> (stating that it took less than twenty-four hours for Uber and Lyft to get set up after the Passenger Transportation Board’s approval).

¹⁶⁰ See Vasconcelos & Hall, *supra* note 132, at 55, 63 (discussing the taxi industry’s strong presence).

¹⁶¹ *Id.* at 60.

¹⁶² See Zwick, Spicer & Young, *supra* note 136, at 365 (illustrating how a vote to end the moratorium on taxi permit issuance was rejected in October of 2015 “in response to objections and overwhelming push back from the taxi industry”).

¹⁶³ Vasconcelos & Hall, *supra* note 132, at 56, 63.

¹⁶⁴ See *id.* at 60 (describing the process and stakeholders that influenced the “made in BC” framework); see also *Expert Hired*, *supra* note 147 (showcasing how government officials hired industry experts to develop a “made-in-B.C.” approach).

at a measured pace.¹⁶⁵ Government actors in BC took time to examine how other jurisdictions met the challenges presented by ridesharing, and noted some of the negative effects produced by those efforts, including declining use of public transportation.¹⁶⁶ The latter concerned the BC government, which had invested significantly in public infrastructure.¹⁶⁷ In keeping with their measured actions, the key government actors in British Columbia and Vancouver avoided adopting the platform firms' ideational framing in their own contributions to the discourse about ridesharing. The regulatory transformation process—initiated under a BC Liberal government and completed by the NDP—illustrates the executive's firm intention to maintain control over the timing and direction of reform without yielding to pressure from the platform firms.

B. *Political Circumstances and Institutional Contexts: Tackling Labor Issues*

As noted above, the app-based transportation firms' low-cost business models assume that labor and employment laws will not apply to their drivers.¹⁶⁸ As such, the drivers' legal status—as employees, independent contractors, or some third category of worker—has been central to numerous legal disputes worldwide.¹⁶⁹ California and British Columbia are no exception even though initially neither jurisdiction's regulation of platform companies addressed labor issues. Eventually both governments acted to clarify the drivers' status. Not surprisingly, the firms fought back and ultimately achieved overlapping results in both jurisdictions, although important differences remain with implications for securing decent work for the drivers.

¹⁶⁵ *B.C. Premier on Board with Ride-hailing as Taxi Industry Fights Back*, CBC NEWS (Sept. 5, 2019, 8:59 PM), <https://www.cbc.ca/news/canada/british-columbia/ride-hailing-john-horgan-bc-1.5272560>; see also *John Horgan*, PRIME MINISTER OF CANADA (Nov. 1, 2023), <https://www.pm.gc.ca/en/news/backgrounders/2023/11/01/john-horgan> (noting that John Horgan is a member of the NDP).

¹⁶⁶ See Marshall, *supra* note 159 (reporting research on the negative effects of ridesharing on public transport ridership and BC officials' desire to avoid that).

¹⁶⁷ *Id.*

¹⁶⁸ See Collier, Dubal & Carter, *supra* note 24, at 920 (noting that Uber's main opposition to regulation focused on those components which made its business model uniquely insulated from extant regulations).

¹⁶⁹ For a comparative law examination of the use and effects of creating an intermediate third category between employee and independent contractor, specifically in Canada, Italy, Spain, Germany, and South Korea, see generally Miriam A. Cherry & Antonio Aloisi, *A Critical Examination of a Third Employment Category for On-Demand Work (In Comparative Perspective)*, in *CAMBRIDGE HANDBOOK ON THE LAW OF THE SHARING ECONOMY* 316–27 (Nestor M. Davidson, Michèle Finck & John J. Infranca eds., 2018).

1. *App-Based Drivers' Status in California*

The decision of whether a worker should be classified as an employee or an independent contractor is legally consequential. If found to be an employee, the worker is covered by the rights and protections of labor and employment law. In California, for example, those rights and protections include minimum wage law, the right to overtime, rights to meal and break times, paid sick leave, paid family leave, workers compensation, and unemployment insurance.¹⁷⁰ If the worker is deemed instead to be an independent contractor, they have no such protection.¹⁷¹

California law defines app-based drivers in the transportation and delivery sector as independent contractors and sets forth rights and protections for them in the *Protect App-Based Drivers Services Act*, which in 2020 was passed as Proposition 22 via the state's constitutional voter initiative process.¹⁷² The Act defines the drivers as independent contractors, yet they are not true independent contractors. The contracts they sign with the firms prohibit drivers from setting their own rates or developing relationships with their passengers.¹⁷³ The Act sets a driver compensation floor at 120% of hourly minimum wage, but is based only on "engaged time," defined as when the app sends them a ride request, they accept the assignment, and complete it.¹⁷⁴ Drivers are not paid for "wait time," which for some drivers amounts to one-third of the time spent on the job. The law makes no provision for driver expenses except a requirement that the firms pay \$0.30 per mile for engaged time only.¹⁷⁵ Legally, the drivers may be eligible for wage replacement of up to two years when injured,¹⁷⁶ and some drivers may qualify for healthcare subsidies.¹⁷⁷ Additionally, the Act attempted to curtail the ability of drivers to unionize, although the extent to

¹⁷⁰ Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 52, 55–56; *Meal and Rest Breaks in California*, CALCHAMBER, <https://www.calchamber.com/california-labor-law/meal-and-rest-breaks> (last visited Jan. 22, 2026).

¹⁷¹ See Sarah M. Levine, *Gig-Economy Myths and Missteps*, 134 *YALE L.J.F.* 331, 334–36 (2025) (describing the limited protections available to independent contractors under federal and state labor provisions).

¹⁷² See Andrias, *supra* note 8, at 264 (providing an overview of the implications of Proposition 22 on app-based drivers once passed by voters in 2020).

¹⁷³ Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 57.

¹⁷⁴ CAL. BUS. & PROF. CODE §§ 7453(4)(A), 7463(j) (West 2025).

¹⁷⁵ *Id.* § 7453(4)(B)(ii) (West 2025).

¹⁷⁶ *Id.* § 7455(a)(2)(A) (West 2025).

¹⁷⁷ *Id.* § 7454(a) (West 2025).

which the law inhibited unionization was unclear.¹⁷⁸ The Act was also drafted to be close to impossible to amend.¹⁷⁹

In economic terms, this law has been disastrous for the drivers.¹⁸⁰ The question we address is the extent to which the government played a role in what has been described as a case of regulatory capture by the platform firms.

i. The Debate and Passage of AB5

Remarkably, state law immediately prior to the Act's passage appeared to define the app-based drivers' status as that of employees. California lawmakers' most forceful attempt to clarify the drivers' status as employees was the passage of Assembly Bill 5 ('AB5') in 2019.¹⁸¹ Indeed, AB5 was then erroneously described in Proposition 22 as threatening to force the app-based drivers to work set shifts and mandatory hours.¹⁸²

¹⁷⁸ Initially, the drivers' status as independent contractors appeared to hinder unionization. Generally, independent contractors are barred from unionizing under U.S. anti-trust law unless they obtain specific statutory authorization. *Chamber of Com. v. City of Seattle*, 890 F.3d 769, 780–90 (9th Cir. 2018). Complicating matters was the interaction of two provisions of the Act itself. Section 7465 of the Act specifies that the legislature can amend the Act by passing a statute in both houses by a seven-eighths majority if that statute is “consistent with, and furthers the purpose of,” the Act. CAL. BUS. & PROF. CODE § 7465(a) (West 2025). Additionally, section 7465(c)(4) of the Act defines as an amendment any statute that “authorizes any entity or organization to represent the interests of app-based drivers” in connection with traditional bargaining subjects such as wages, hours, and working conditions. *Id.* § 7465(c)(4) (West 2025). Put together, this arguably meant that to legislate to permit driver unionization, the legislature would need to muster a super, super majority in favor. However, one California Court of Appeal has held section 7465(c)(4) as unconstitutional on separation of powers grounds. *Castellanos v. State of California*, 305 Cal. Rptr. 3d 717, 177 (Cal. Ct. App. 2023). Subsequently, the California Supreme Court held that the Act was constitutional on different grounds and expressly noted that section 7465(c)(4) was not before the Court. *Castellanos v. California*, 552 P.3d 406, 413 (Cal. 2024). Given this, any legislation providing for driver unionization rights seemed likely to be challenged in court. In 2025, however, a bill was passed in the California State Assembly, which provided the app-based drivers in the transportation sector with the right to form a union and bargain collectively. Assembly Bill No. 1430 2025-2025 Reg. Sess. Ch. 335 (Cal. 2025). The bill then advanced to the California State Senate. At first, the industry association representing the platform firms criticized the pending legislation. Troy Wolverton, *Bill Enabling Unionization of Ride-hail Drivers Takes Big Step*, S.F. EXAM’R, (Jun. 13, 2025), https://www.sfexaminer.com/news/technology/california-uber-lyft-drivers-closer-to-unionizing-rights/article_f66e506a-fbd4-4779-a9bb-370e4afdb5cf.html. Yet ultimately, a deal was struck between the State of California, the platform firms, and the Service Employees International Union (SEIU), which allows the drivers the opportunity to unionize as independent contractors, and also greatly reduces the insurance obligations of the platform firms. The bill was signed by Governor Newsom in October 2025. See *infra* notes 411–415 and accompanying text.

¹⁷⁹ See CAL. BUS. & PROF. CODE § 7465(a), (c)(3), (d) which requires a seven-eighths majority vote in both the California Assembly and Senate in order to amend the Act, and any amendment must further the purpose of the Act.

¹⁸⁰ See JACOBS, REICH, CHALLENGOR & FARMAND, *supra* note 9, at 26–28 (“Even with the [Proposition 22] adjustments . . . passenger drivers in California earned less than their counterparts outside California their counterparts outside California.”).

¹⁸¹ CAL. LAB. CODE § 2750.3 (West 2025) (repealed Sept. 4, 2020).

¹⁸² See *supra* notes 1–5 and accompanying text (discussing Proposition 22’s warning regarding “recent legislative action [that] threatens flexible working conditions”).

The legislative campaign for AB5 began after the California Supreme Court's 2018 decision in *Dynamex Operations West, Inc. v. Superior Court*.¹⁸³ *Dynamex* did not involve a platform firm; yet the court in this employee misclassification suit decried misclassification as ubiquitous and adopted a legal presumption that all workers in California are employees for the purpose of the state's wage orders.¹⁸⁴ To rebut the presumption, the hiring entity must prove all three prongs of what is known as the ABC test.¹⁸⁵ Rebutting the presumption is no easy feat.¹⁸⁶

Not long thereafter, then Assemblywoman Lorena Gonzalez (Democratic Party) introduced AB5, which sought to extend *Dynamex* beyond California wage orders to all state matters in California's Labor Code and Unemployment Insurance Code.¹⁸⁷ Gonzalez saw protecting app-based drivers as central to her efforts. In an opinion essay, Gonzalez, who had been a San Diego trade union leader, called "the gig economy—and the absence of worker protections that come with it— . . . nothing short of a modern-day sharecropping business."¹⁸⁸ When Gonzalez asserted that the platform firms were "unscrupulous,"¹⁸⁹ she deployed a discourse of labor rights that deviated significantly from that of the politicians and regulators who had supported the platform firms when they first emerged on the streets of San Francisco.

Gavin Newsom, Governor of California at the time, had been an early, staunch supporter of the platform firms and had cautioned against over-regulating Uber.¹⁹⁰ Examining Governor Newsom's actions and discourse

¹⁸³ *Dynamex Operations West, Inc. v. Superior Ct.*, 416 P.3d 1 (Cal. 2018); see Lorena Gonzalez, Opinion, *The Gig Economy Has Costs. We Can No Longer Ignore Them.*, WASH. POST (Sept. 11, 2019), <https://www.washingtonpost.com/opinions/2019/09/11/gig-economy-has-costs-we-can-no-longer-ignore-them/> (noting that AB5 was meant to codify the *Dynamex* decision).

¹⁸⁴ *Dynamex*, 416 P.3d at 35–40.

¹⁸⁵ *Id.* at 35. Prong A requires showing the worker is free from the control and direction of the hirer in the performance of work, both under a contract and in fact; Prong B requires showing the worker performs work outside the usual course of the hirer's business; and prong C requires showing the worker is customarily engaged in an independent trade, occupation, or business of the same nature as that involved in the work performed. *Id.*

¹⁸⁶ See Miriam A. Cherry, *An Update on Gig Worker Employment Status Across the United States*, 54 U. PAC. L. REV. 21, 24 (2023) (reasoning that the ABC test generally makes it easier for workers to establish employee status); Dubal, *From AB5 to Proposition 22*, *supra* note 11, at 59–60 (stating that the ABC test makes it harder for companies "to evade employment status by reimagining what is core to their business").

¹⁸⁷ Andrias, *supra* note 8, at 262; Gonzalez, *supra* note 183; see *About Lorena*, ASSEMBLYWOMAN LORENA GONZALEZ, <https://www.votelorena.com/about-lorena/> (last visited Jan. 22, 2026) (noting that Lorena Gonzalez is a member of the Democrat Party).

¹⁸⁸ Gonzalez, *supra* note 183.

¹⁸⁹ *Id.*

¹⁹⁰ *Gavin Newsom*, BALLOTEDIA, https://ballotpedia.org/Gavin_Newsom (last visited Jan. 22, 2026). See *Don't Stifle Innovation*, *supra* note 131 ("[I]t is up to lawmakers to create a regulatory framework that protects consumers while ensuring there is adequate flexibility for innovative and creative transportation solutions.").

illuminates in part the state's role in the political battle culminating in Proposition 22's passage.

The application of *Dynamex* to the app-based drivers and the prospect of AB5's passage put Governor Newsom in a difficult position. Elected with robust support from organized labor, and with strong ties to the platform sector, he advocated for compromise between the trade unions and the firms.¹⁹¹ He also promoted negotiation between the legislature and the firms for a "deal" related to AB5.¹⁹² In this sense, Newsom, California's chief executive, tacitly endorsed providing the drivers with fewer rights and protections than employees, although he expressly advocated for permitting them to unionize.¹⁹³

Additionally, Newsom continued to engage in discourse about technology's impact on the workplace, emphasizing that it required "innovation" and "flexibility."¹⁹⁴ This ideational framing echoed that of the platform firms, which described their business model as "innovative and flexible," and hence deserving of an exemption from labor and employment law.¹⁹⁵

However, the platform firms had adjusted their discourse over time. Faced with a legal threat to their favorable regulatory position, the firms no longer sought to avoid labor regulation entirely. Specifically, the firms sought to amend the proposed legislation creating a distinct category for app-based drivers: one in "between [independent] contractor and employee."¹⁹⁶

In an opinion essay, Uber CEO, Dara Khosrowshahi, and Lyft cofounders, Logan Green and John Zimmer, lauded the flexibility of the drivers' independent work, but acknowledged the economic challenges

¹⁹¹ AirTalk Staff, *Who Loses in the Case of Dynamex? We Get an Update on Where the Legislation Stands*, LAIST (Aug. 2, 2019), <https://laist.com/shows/airtalk/who-loses-in-the-case-of-dynamex-we-get-an-update-on-where-the-legislation-stands> (noting "Governor Gavin Newsom, who is supported by both labor unions and tech companies, is urging the two groups to negotiate a compromise.").

¹⁹² See Kate Conger & Noam Scheiber, *California Labor Bill, Near Passage, Is a Blow to Uber and Lyft*, N.Y. TIMES (Sept. 9, 2019), <https://www.nytimes.com/2019/09/09/business/economy/uber-lyft-california.html> (noting that the Governor's aides reached out to Assemblywoman Gonzalez "to gauge her openness to a deal [with the platform firms]").

¹⁹³ See Hannah Wiley & Sophia Bollag, *Late Lobbying is Fast and Furious as California Lawmakers Decide Who's an Employee*, SACRAMENTO BEE (Aug. 29, 2019, 10:51 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article234477082.html> (reporting that Newsom was sympathetic to Uber and Lyft but strongly supported allowing drivers to unionize).

¹⁹⁴ Cheryl Miller, *Newsom Doesn't Dwell on 'Dynamex,' Pointing to 'Much Bigger' Labor Issues*, THE RECORDER, Feb. 12, 2019.

¹⁹⁵ Margot Roosevelt, Liam Dillon & Johana Bhuiyan, *A Bill Giving Workplace Protection to a Million Californians Moves One Step Closer to Law*, L.A. TIMES (Aug. 30, 2019, 4:40 PM), <https://www.latimes.com/business/story/2019-08-30/ab5-dynamex-independent-contractors-bill> ("App-based companies argue they offer a different employment model—innovative and flexible—and should thus be exempted from AB 5.").

¹⁹⁶ See Conger & Scheiber, *supra* note 192 (detailing efforts made by ride-hailing companies to have their drivers classified "between contractor and employee.").

faced by independent contractors.¹⁹⁷ The solution, they asserted, was to “update century-old employment laws.”¹⁹⁸ To do so, they were prepared to work with unions and lawmakers to create fair standards for drivers and a non-union drivers’ association “to represent drivers’ interests.”¹⁹⁹ Their proposal lacked detail but clearly contemplated offering the drivers less than they would be entitled to if they were classified as employees.²⁰⁰ As for the firms’ motive, they noted that it was “no secret that a change to the employment classification of ride-share drivers would pose a risk to our businesses.”²⁰¹ In other words, changing the drivers’ status to that of employees was incompatible with their low-cost labor business model.

Not long before AB5 was passed, Newsom still held out for a deal between labor unions and the platform firms. In a Labor Day 2019 opinion essay, in which he stated he supported AB5, the Governor vaguely echoed the firms’ proposal, describing the negotiations over AB5 as attempting to “help over 200,000 workers in California increase their wages and benefits, maintain the flexibility many enjoy and form a union to improve their economic security.”²⁰² Moreover, Newsom referenced the Trump administration’s position “that workers in the gig economy are independent contractors and therefore not covered by federal labor laws, including the

¹⁹⁷ Dara Khosrowshahi, Logan Green & John Zimmer, Opinion, *Open Forum: Uber, Lyft Ready to Do Our Part for Drivers*, S.F. CHRON. (June 12, 2019, 6:00 AM), <https://www.sfchronicle.com/opinion/openforum/article/Open-Forum-Uber-Lyft-ready-to-do-our-part-for-13969843.php>; Dara Khosrowshahi, UBER: LEADERSHIP, <https://www.uber.com/us/en/about/leadership/dara-khosrowshahi> (last visited Jan. 22, 2026) (noting that Dara Khosrowshahi has been Uber’s CEO since 2017); Eric Ryan, *Two Years After Stepping Down, Lyft’s Cofounder is Ready to Talk*, FORBES: SMALL BUS. (Apr. 10, 2025, 2:19 PM), <https://www.forbes.com/sites/cereal-entrepreneurs/2025/04/10/lyfts-cofounder-stepped-down-two-years-ago-now-hes-ready-to-talk> (stating that Logan Green and John Zimmer are the cofounders of Lyft).

¹⁹⁸ Khosrowshahi, Green & Zimmer, *supra* note 197.

¹⁹⁹ *Id.*

²⁰⁰ Margot Roosevelt, *Uber, Lyft Say Making Drivers Employees Would ‘Pose a Risk to Our Businesses’*, L.A. TIMES (June 12, 2019, 7:38 AM), <https://www.latimes.com/business/la-fi-tn-uber-lyft-contractor-drivers-20190612-story.html>.

²⁰¹ Khosrowshahi, Green & Zimmer, *supra* note 197.

²⁰² Gavin Newsom, Opinion, *On Labor Day, Let’s Pledge to Protect Workers and Create Paths to Union Membership*, SACRAMENTO BEE (Sept. 2, 2019, 4:10 PM) [hereinafter *On Labor Day*], <https://www.sacbee.com/opinion/article234624897.html>. It was clear that Newsom was referring to the app-based drivers since at the time Uber estimated there were around 200,000 drivers. See Tony West, *Update on AB5*, UBER NEWSROOM (Sept. 11, 2019), <https://www.uber.com/en-NL/newsroom/ab5-update> (“We will continue to defend the innovation that makes that kind of choice, flexibility and independence a reality for over 200,000 drivers in California.”).

right to form a union.”²⁰³ This latter point he noted was an opportunity to pass state law endowing those workers with the opportunity to unionize.²⁰⁴

The governor’s efforts to broker a compromise were futile. Uber and Lyft were unable to persuade lawmakers or union leaders to provide the app-based transportation industry with an exemption to AB5.²⁰⁵ In September 2019, the California Legislature passed AB5 without an amendment for the app-based transportation and delivery companies.²⁰⁶ Governor Newsom signed the bill in a private rather than a public ceremony.²⁰⁷

In a news conference, Tony West, Uber’s Chief Legal Officer, was open about the failed talks with California’s lawmakers, the Governor and his staff, and unions, referencing the “new progressive framework,”²⁰⁸ which Uber had proposed but had been rejected. That framework, creation of a third category of independent worker, would embrace guaranteed minimum earnings, portable benefits, and what he referred to as “sectoral bargaining.”²⁰⁹ He also noted that Uber would not reclassify the drivers as employees even after AB5 went into effect, and was considering various legal options, including pursuing with Lyft and other platform companies a statewide ballot initiative to address the status of the drivers.²¹⁰ While West did endorse possible negotiation of a “compromise agreement” over the new law,²¹¹ it was clear that the company would continue to engage in contentious compliance.

Newsom’s signing statement described AB5 as “landmark legislation . . . [that] will help reduce worker misclassification . . . ,” yet also contained what could be interpreted as an olive branch to the technology sector:

²⁰³ See *On Labor Day*, *supra* note 202. In April 2019, during the first Trump administration, the National Labor Relations Board’s General Counsel issued an advice memorandum concluding that Uber drivers were not employees covered by the National Labor Relations Act. See N.L.R.B., OFF. OF THE GEN. COUNS., ADVICE MEMORANDUM, SUBJECT: UBER TECHNOLOGIES, INC., CASES 13-CA-163062, 14-CA-158833 & 29-CA-177483 (2019). They thus did not have a federal right to organize and collectively bargain. Applying a common law agency test, the advice memorandum found that Uber drivers were independent contractors. *Id.*

²⁰⁴ See *On Labor Day*, *supra* note 202 (“But the federal government’s move away from workers creates an opportunity in California: only when the National Labor Relations Act does not cover workers may states act to provide the right to organize a union, allowing workers to bargain for better pay, benefits and working conditions.”).

²⁰⁵ In a Washington Post editorial, then Assemblywoman Gonzalez, the sponsor of AB5, noted that she remained unmoved by the platforms’ “behind the scenes” efforts to dilute the bill. Gonzalez, *supra* note 183.

²⁰⁶ John Myers, Johana Bhuiyan & Margot Roosevelt, *Newsom Signs Bill Rewriting California Employment Law, Limiting Use of Independent Contractors*, L.A. TIMES (Sept. 18, 2019, 3:55PM), <https://www.latimes.com/california/story/2019-09-18/gavin-newsom-signs-ab5-employees0independent-contractors-california>.

²⁰⁷ *Id.*

²⁰⁸ West, *supra* note 202.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

Assembly Bill 5 is an important step. A next step is creating pathways for more workers to form a union, collectively bargain to earn more, and have a stronger voice at work—all while preserving flexibility and innovation.

In this spirit, I will convene leaders from the Legislature, the labor movement and the business community to support innovation and a more inclusive economy by stepping in where the federal government has fallen short and granting workers excluded from the National Labor Relations Act the right to organize and collectively bargain.²¹²

The Governor's reference to "flexibility and innovation" harks back to the views Newsom expressed in 2014 that government must avoid over-regulation of the platform economy.²¹³ The signing statement, however, is balanced with a pitch for unionization and collective bargaining rights for the drivers. Perhaps he hoped continued negotiation might produce a third category of worker akin to the Uber framework West referenced, though West did not endorse traditional collective bargaining.²¹⁴ The idea of creating for the gig economy an "independent worker" status with the right to organize and collectively bargain, but without many other basic employment rights and protections, including wage and hour protection and access to unemployment compensation, was proposed in U.S. policy circles prior to 2019.²¹⁵

Importantly, in his AB5 signing statement, Governor Newsom signaled his willingness for a deal that would give app-based drivers less than they would be entitled to as employees. By tirelessly advocating for compromise, Newsom, in effect, legitimized the platforms' argument that the app-based drivers should not be classified as employees.

²¹² GAVIN NEWSOM, SIGNING STATEMENT FOR ASSEMBLY BILL 5 (2019), <https://www.gov.ca.gov/wp-content/uploads/2019/09/AB-5-Signing-Statement-2019.pdf>.

²¹³ *Id.* See *supra* note 131 and accompanying text for Newsom's 2014 views regarding regulation.

²¹⁴ Indeed, Uber CEO Dara Khosrowshahi declared during an Axios interview, "I wouldn't support unionization [for Uber drivers] because I think it makes things very difficult for the company." Jeremy B. White, *Uber CEO Balks at Unionization, Complicating Path for the State*, POLITICOPRO: STATE (Nov. 11, 2019, 3:14 PM), <https://subscriber.politicopro.com/article/2019/11/11/uber-ceo-balks-at-unionization-complicating-path-for-california-1226757>.

²¹⁵ See, e.g., SETH D. HARRIS & ALAN B. KRUEGER, HAMILTON PROJECT, A PROPOSAL FOR MODERNIZING LABOR LAWS FOR TWENTY-FIRST-CENTURY WORK: THE "INDEPENDENT WORKER" 5, 15, 20 (2015) (proposing the establishment of an "independent worker" category allowing collective bargaining but excluding wage and hour and employment protections).

i. The Battle Over Proposition 22

AB5, a law aimed at combatting worker misclassification, especially but not only in the gig economy,²¹⁶ became effective January 1, 2020.²¹⁷ In March 2020, the World Health Organization declared the widely spreading COVID-19 virus a pandemic, and the U.S. declared that COVID-19 constituted a national emergency.²¹⁸ The battle over Proposition 22 took place during an unprecedented and destabilizing historical year.

In one telling, the government was united in its efforts to empower workers and quash misclassification by embracing the ABC test to determine worker status. Following its progressive tradition, the state acted incrementally, beginning with the judiciary in *Dynamex*, expanding that decision's reach through legislative action, and concluding with decisive executive approval by Governor Newsom.²¹⁹ In less than a year, however, regulatory power over the platforms' relationship with their drivers slipped from state control when the voters passed Proposition 22.

Victory for the platform firms is most often attributed to their actions. After AB5's passage, the firms engaged in contentious compliance. First, the firms refused to comply with AB5, continuing to classify the drivers as independent contractors.²²⁰ Next, as they had publicly declared, if they could not strike a deal with legislators or unions, they would take the drivers' classification controversy directly to the voters.²²¹

The Yes on Proposition 22 campaign was aggressive and expensive. The platform firms spent over \$200 million to reach California's voters.²²² Controlling their apps enabled the firms to inundate drivers and app users with pro-Proposition 22 messages.²²³ Delivery drivers were compelled to distribute pro-Proposition 22 leaflets when they delivered food.²²⁴ The firms' campaign discourse was augmented with assertions that they were

²¹⁶ In fact, Uber and Postmates sued the State of California claiming that by exempting some app-based companies from the reach of AB5 while refusing to exempt Uber and Postmates, California violated the federal and state constitutional principle of equal protection. *Olson v. California*, 104 F.4th 66 (9th Cir. 2024). The Ninth Circuit Court of Appeals disagreed, ruling that there was a rational basis for the state's decision to subject the plaintiffs to AB5. *Id.* at 71–71. Those platform companies were viewed as having misclassified their workers, an ill the legislation was designed to address. *Id.* at 72.

²¹⁷ Andrias, *supra* note 8, at 262.

²¹⁸ Susan Bisom-Rapp & Marco Peruzzi, *Regulatory Choices and Legal Disputes in the Fight Against Covid-19 Infections in the Workplace: A Comparison of Vaccine Mandates in the Italian and US Contexts*, in *WORK BEYOND THE PANDEMIC TOWARDS A HUMAN-CENTRED RECOVERY* 211–12 (Tindara Addabbo, Edoardo Ales, Ylenia Curzi, Tommaso Fabbri, Olgo Rymkevich & Lacopo S. Senatori eds., 2024).

²¹⁹ See *supra* Part II.B.1.i (discussing 2018 *Dynamex* decision and its implications).

²²⁰ Andrias, *supra* note 8, at 263.

²²¹ West, *supra* note 202.

²²² *From AB5 to Proposition 22*, *supra* note 11, at 55.

²²³ Andrias, *supra* note 8, at 265.

²²⁴ *Id.* at 266.

catalysts for racial justice.²²⁵ The appeal of that latter ideational framing no doubt acted as a coalition magnet enhancing the firms' ability to forge alliances with civil rights organizations.²²⁶ In their actions, as they had been during negotiations over AB5, the platform firms were united. These competing companies acted together as regulatory entrepreneurs.

In contrast, the government acted at cross-purposes through action and inaction. Our typology predicts that lack of unity within the state undermines decent work and provides openings for precarious work to take root.²²⁷ Once the battle over Proposition 22 began, Governor Newsom remained silent, refusing to take a position on the proposition.²²⁸ Examining this posture in terms of our typology, Newsom can be seen as ceding the state's regulatory power to other players.²²⁹ As chief executive, at least with respect to the app-based drivers, the Governor abandoned the state's role as a definer of change, a protector of substantive rights, and an insurer against social risk and inequality.²³⁰ While his motives remain unclear, Veena Dubal has noted that AB5's drafters expected that "Newsom would attempt to politically preclude" enforcement of AB5 against the platform firms.²³¹ Thus, the drafters provided California's independent city attorneys with power to enforce the new law.²³²

²²⁵ See Veena Dubal, *The New Racial Wage Code*, 15 HARV. L. & POL'Y REV. 511, 512–14, 540–41 (2021) [hereinafter *New Racial Wage Code*] (asserting that the firms portrayed themselves as catalysts for racial justice by adopting racially positive slogans and tactics).

²²⁶ Andrias, *supra* note 8, at 266.

²²⁷ *Supra* Table 1 and accompanying text.

²²⁸ Khaleda Rahman, *While Joe Biden and Kamala Harris Opposed California's Prop 22, Gov. Newsom Stayed Silent*, NEWSWEEK, (Jan. 5, 2021, 8:38 AM), <https://www.newsweek.com/gavin-newsom-silent-california-proposition-22-1558978> ("Newsom has long stayed silent."); Jeremy B. White, *Newsom Sidesteps Prop 22 Position, Signals Desire for Gig Industry Deal*, SAN JOAQUIN PARTNERSHIP (Oct. 29, 2020, 4:13 PM), <https://sanjoaquinpartnership.com/newsom-sidesteps-prop-22-position-signals-desire-for-gig-industry-deal> (noting that Newsom refused to disclose how he voted on Proposition 22 but continued to hope for a compromise).

²²⁹ *Supra* Table 1.

²³⁰ *Id.* An interesting contrast is presented by Governor Arnold Schwarzenegger's position on Proposition 8, which amended the California constitution to prohibit same-sex marriage. Responding to a California Supreme Court decision holding that same-sex marriage was protected by the state constitution, Schwarzenegger issued a press release announcing his opposition to any effort to amend the state constitution. Press Release, Governor Arnold Schwarzenegger, Gov. Schwarzenegger Issues Statement on Today's State Supreme Court Ruling (May 15, 2008). Reacting to two proposed initiatives that would overturn the Court's decision, Schwarzenegger promised to fight any initiative that "qualifie[d] for the November ballot." Allison Hoffman, *Schwarzenegger: No to Marriage Amendment*, THE CHRISTIAN POST (Apr. 12, 2008, 7:26AM), https://web.archive.org/web/20080420040029/http://www.christianpost.com:80/article/20080412/31920_Schwarzenegger:_No_to_Marriage_Amendment_.htm. Ultimately, after Proposition 8 passed, Schwarzenegger decided against defending the anti-same-sex marriage proposition in court. Maura Dolan, *Schwarzenegger Decides Against Defending Prop. 8 in Federal Court*, L.A. TIMES (Jun. 18, 2009, 12:00 AM), https://www.latimes.com/archives/la-xpm-2009-jun-18-me-gay-marriage18-story.html?utm_source=chatgpt.com. Thus, it certainly is possible for a California governor to oppose a proposition.

²³¹ *From AB5 to Proposition 22*, *supra* note 11, at 62.

²³² *Id.*

Newsom's position diverged from that of Assemblywoman Gonzalez, who continued to defend AB5 and oppose the platform firms' campaign.²³³ The Governor's silence was also at odds with other government leaders, who acted to enforce AB5. In May 2020, California's Attorney General Xavier Becerra (Democratic Party), along with the city attorneys of Los Angeles, San Diego, and San Francisco, sued Uber and Lyft for misclassifying their drivers.²³⁴ One month later, they successfully filed for a preliminary injunction to prevent Uber and Lyft from continuing to classify the drivers as independent contractors during the litigation.²³⁵ Judge Ethan Schulman granted the injunction, finding that the government "amply demonstrated a reasonable probability of prevailing on their claim that [Uber and Lyft were] misclassifying their drivers."²³⁶ Uber and Lyft appealed, but in October 2020, an appellate court affirmed Judge Schulman's decision, which stayed enforcement of the injunction pending the outcome of Proposition 22.²³⁷ On November 3, 2020, Proposition 22 was passed with close to 60% support of the voters.²³⁸

California's chief executive, in remaining neutral concerning Proposition 22, was thus at odds with other government actors. We cannot say that had Governor Newsom sided with Proposition 22's opponents, the electoral outcome would have been different. We can, however, highlight the role he played in both the debate over AB5 and the battle over Proposition 22. Regarding the latter, in adopting a posture of neutrality, Newsom failed to advocate for decent work. His silence contributed to the state's ambiguous message about the proposition prior to its passage, and left the opposition, made up mainly of pro-AB5 drivers and labor unions, in a weak position. Although labor was united against Proposition 22, two unions had negotiated with the platform firms prior to AB5's passage,

²³³ See John Myers, *Lorena Gonzalez Likes a Good Fight. She got it with Hotly Debated AB5*, L.A. TIMES (Feb. 8, 2020, 5:00AM), <https://www.latimes.com/california/story/2020-02-08/lorena-gonzalez-california-assembly-ab5-profile> ("I believe so fully in [AB5] . . ."); Marlena Harvey, *Lorena Gonzalez Pushes #NoOn22*, SAN DIEGO CITY TIMES (Nov. 3, 2020), <https://sdcitytimes.com/top-stories/2020/11/03/lorena-gonzalez-pushes-noon22> (reporting on Gonzalez's Twitter support for the hashtag "NoOn22").

²³⁴ Press Release, Mara W. Elliot, Attorney General Becerra and City Attorneys of Los Angeles, San Diego, and San Francisco Sue Uber and Lyft Alleging Worker Misclassification (May 5, 2020); see *Xavier Becerra, 33rd Attorney General*, ABOUT THE AG: HISTORY, <https://oag.ca.gov/history/33becerra> (last visited Jan. 23, 2026) (noting that Xavier Becerra is a member of the Democratic Party).

²³⁵ *From AB5 to Proposition 22*, *supra* note 11, at 63.

²³⁶ *People v. Uber Technologies, Inc.*, 2020 WL 5440308 *2 (Cal. Super. 2020).

²³⁷ *People v. Uber Technologies, Inc.*, 270 Cal.Rptr.3d 290 (Cal. Ct. App. 2020).

²³⁸ Savannah M. Singletary, Comment, *The Gig is Up: California's Crackdown on the Gig Economy*, 43 CAMPBELL L. REV. 521, 534 (2021).

creating rifts in the labor movement.²³⁹ Thus, a weakened opposition faced a united opponent with far greater ideational and non-ideational resources.

Aside from Governor Newsom, however, there are institutional factors that muted the state's message and amplified that of the platforms in the two most important government documents produced for the voters before the passage of Proposition 22. We turn to those factors next.

ii. Direct Democracy and California's Election Rules

Many U.S. jurisdictions, which provide for direct democracy, embraced ballot initiatives during the Progressive Era (approximately 1898–1919) as an antidote to the concentration of special interest money and influence on the legislature.²⁴⁰ A tool meant to enable the people to contribute to the construction of the legal order,²⁴¹ Americans strongly support such legal processes, although the enthusiasm of scholars for them is more skeptical.²⁴²

Dating to 1911, California has a long history of providing for direct democracy via ballot measures submitted to and voted upon by the electorate.²⁴³ The California Constitution provides for ballot initiatives, which are citizen-sponsored measures enabling the voters to propose statutes or to amend the state's Constitution.²⁴⁴ An "initiative . . . placed on the ballot . . . is called a proposition."²⁴⁵ The process of proposing a citizen-sponsored ballot measure and the requirements for placing it before the voters are specified in the California Constitution and the California Elections Code.²⁴⁶ The latter demands state neutrality, restricting what the government can communicate to the voters about a proposition.

Perhaps the most important government document the voters receive before an election is a guide to the candidates and ballot measures.

²³⁹ See *From AB5 to Proposition 22*, *supra* note 11, at 60 (explaining that two unions had negotiated with the platform firms prior to AB5's passage); Noam Scheiber, *Debate Over Uber and Lyft Drivers' Rights in California Has Split Labor*, N.Y. TIMES (Jun. 29, 2019), <https://www.nytimes.com/2019/06/29/business/economy/uber-lyft-driversunions.html> (reporting the union-platform negotiations caused rifts and pitted unions against each other).

²⁴⁰ Andrias, *supra* note 8, at 269; *A Short History of Citizen-Initiated Ballot Measures*, NEW AMERICA, <https://www.newamerica.org/political-reform/reports/expanding-citizen-led-policy-making/a-short-history-of-citizen-initiated-ballot-measures> (last visited Jan. 23, 2026).

²⁴¹ Patrick Taillon, *Le Référendum Expression Directe de la Souveraineté du Peuple?: Essai Critique sur la Rationalisation de L'expression Référendaire en Droit Compare*, UNIV. LAVAL & UNIV. PARIS, at 1 (2011).

²⁴² See, e.g., Andrias, *supra* note 8, at 275–76 (discussing negative use of ballot reforms on workers' rights and the little success of unions securing workers' rights through ballot reforms).

²⁴³ RICH BRAUNSTEIN, INITIATIVE AND REFERENDUM VOTING: GOVERNING THROUGH DIRECT DEMOCRACY IN THE UNITED STATES 29–30 (2004); JOHN M. ALLSWANG, THE INITIATIVE AND REFERENDUM IN CALIFORNIA, 1898-1998 17–18 (2000).

²⁴⁴ CAL. CONST. art. II, §8. In contrast to ballot initiatives, a referendum provides citizens with veto power over the legislature. CAL. CONST. art. II, §9.

²⁴⁵ Andrias, *supra* note 8, at 270.

²⁴⁶ DANIEL W. MARTIN, HENKE'S CALIFORNIA LAW GUIDE 146–47 (8th ed. 2006). For more discussion on the limits on government communication see *infra* notes 247–256 and accompanying text.

California's Elections Code requires the Secretary of State to create an *Official Voter Information Guide* ("*Voter Guide*").²⁴⁷ The contents of the *Voter Guide* are prescribed in detail by law. There are specific tasks assigned to California's Attorney General, who must create for each initiative on the ballot "a ballot title and summary"²⁴⁸ and a condensed version of the title and summary called the "ballot label."²⁴⁹ The ballot title and summary and the ballot label are subject to word limits. An initiative's ballot title and summary "shall not exceed 100 words."²⁵⁰ A ballot label may not exceed 75 words.²⁵¹ The ballot title and summary must, "include . . . the Legislative Analyst's estimate of the net state and local government fiscal impact [of the initiative],"²⁵² although that estimate is not subject to word limitations.

The language used by the Attorney General in the *Voter Guide* must be accurate and unbiased.²⁵³ In short, the Attorney General may not make an argument supporting or opposing an initiative. The Attorney General's work in this respect may be challenged by petitioning a court for a writ of mandate.²⁵⁴ In fact, Davis White, who was Uber's Director of Public Policy and Government Affairs for the Western United States in 2020, unsuccessfully challenged Attorney General Xavier Becerra's ballot title and summary and ballot label for Proposition 22 as "false, misleading, and improperly partial . . ." ²⁵⁵ One argument made by White was that the Attorney General was biased against Proposition 22 because he had filed a misclassification suit against Uber and Lyft.²⁵⁶ Recall that the platform firms had refused to reclassify the app-based drivers after AB5 went into effect and that the firms were sued by the Attorney General. Judge Laurie Earl held that the misclassification suit was irrelevant.²⁵⁷ Rather, it was the language

²⁴⁷ CAL. ELEC. CODE § 9081.

²⁴⁸ CAL. ELEC. CODE § 9050 (a).

²⁴⁹ CAL. ELEC. CODE § 9050 (a), (b)(2).

²⁵⁰ CAL. ELEC. CODE § 9051(a)(1).

²⁵¹ CAL. ELEC. CODE § 9051(b)(1).

²⁵² CAL. ELEC. CODE § 9051(a)(2).

²⁵³ CAL. ELEC. CODE § 9051(e) ("In providing the ballot title and summary, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.").

²⁵⁴ CAL. ELEC. CODE § 9092. A court will "issue [a writ of mandate] only upon clear and convincing proof that the [language] in question is false, misleading, or inconsistent with the requirements of [the Elections] code . . ." *Id.*

²⁵⁵ *White v. Padilla*, No. 34-2020-8000-3438, at *6 (Cal. Super. 2020); see Davis White, LINKEDIN, <https://www.linkedin.com/in/davis-white-8194635> (last visited Jan. 23, 2025) (stating that Davis White served as Uber's Director of Public Policy and Governmental Affairs for the Western U.S. between 2016 and 2021).

²⁵⁶ *White v. Padilla*, No. 34-2020-8000-3438, at *8.

²⁵⁷ *Id.*

used by the Attorney General in the ballot title and summary, and ballot label that mattered, and that language was “not false, inaccurate, misleading or biased.”²⁵⁸

Note, however, that in the case of AB5 and Proposition 22, the Attorney General in one context—the AB5 misclassification suit—spoke as a law enforcer, while in the other context—the lead-up to voting on Proposition 22—the Attorney General spoke as a neutral legal administrator. Certainly, that duality muddled the message from the government regarding the optimal status for the app-based drivers.

Also required to be set forth in the *Voter Guide* are “arguments and rebuttals for and against each state measure.”²⁵⁹ Pages in the *Voter Guide* reproducing the arguments and rebuttals bear a disclaimer at the bottom noting, “Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy by any official agency.”²⁶⁰ Arguments and rebuttals can be highly partisan and may traffic in misinformation.

The ballot and *Voter Guide* is mailed to voters at their address of record. The *Voter Guide* for the California General Election of 2020 ran 112 pages.²⁶¹ Information for voters about Proposition 22 appeared on five of those pages.²⁶²

In addition to the *Voter Guide*, voters must have access to the propositions themselves. To that end, voters must be informed of where on the Secretary of State’s website the public may locate the “specific . . . statutory provision that the state measure would repeal or revise.”²⁶³ Those measures, compiled under the title *Text of Proposed Laws*, are available in PDF on the *Official Voter Information Guide* webpage for each specific election. The *Text of Proposed Laws* for the California General Election of November 3, 2020, continues to be available in archive on the California Secretary of State’s website.²⁶⁴ The 2020 *Text of Proposed Laws* runs 96 pages, with the text of Proposition 22, known as the *Protect App-Based Drivers and Services Act*, appearing on pages 30–39.²⁶⁵ Because Proposition 22 was a ballot measure, the resulting law was instead drafted by the measure’s proponents and not the government. As explained above, the government is not legally empowered to annotate the text of a proposition to inform the public of the pros and cons of particular provisions.

²⁵⁸ *Id.*

²⁵⁹ CAL. ELEC. CODE § 9084(c).

²⁶⁰ *See, e.g.*, CALIFORNIA SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE, 58–59 (2020) [hereinafter OFFICIAL VOTER INFORMATION] (“Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy by any official agency”).

²⁶¹ *Id.*

²⁶² *Id.* at 12, 56–59.

²⁶³ CAL. ELEC. CODE § 9084(b)(1).

²⁶⁴ *Official Voter Information Guide*, CALIFORNIA SEC’Y OF STATE: CAL. GEN. ELECTION NOV. 3, 2020, <https://vigarchive.sos.ca.gov/2020/general> (last visited Jan. 23, 2026).

²⁶⁵ TEXT OF PROPOSED LAWS, *supra* note 7, at 30–39.

Viewed through the lens of discursive institutionalism, the institution at the center of our analysis is California's constitutional system of direct democracy. State election law prescribes the legal rules for creating the *Voter Information Guide* and *Text of Proposed Laws*. State election law thus constitutes the mechanism that mediates the battle of ideas and enables certain ideas to gain power. Government functionaries are responsible for acting in accordance with these rules, which constrain how the government can convey its position on any ballot proposition. The *Voter Guide* and *Text of Proposed Laws* were government-supervised sites of discursive battle. They reveal how disparate ideas about the status of app-based drivers were placed by the government before the voters.

iii. Examining the Government's Communications

Above, we excerpted text from *The Protect App-Based Drivers and Services Act*, which was first shared with the public by the government as Proposition 22 in the *Text of Proposed Laws*.²⁶⁶ The excerpt's discourse was strident and mischaracterized the government's actions.²⁶⁷ Proposition 22's text also contained dense provisions that before the election even sophisticated analysts failed to comprehend.²⁶⁸ The law, as we noted is almost impossible to amend, and denies the app-based drivers the rights and protections of employees.²⁶⁹ There is a striking contrast between this writing and the government's flat, legalistic wording and structure set forth in the *Voter Guide*.

The *Voter Guide* is an important text that seals the narratives of the proposition's proponents and opponents. It also provides the public seemingly neutral information about the proposition from the government. Ballotpedia rated Proposition 22's 87-word ballot summary at grade 18.²⁷⁰ Understanding the text required a reading level of 18 years of education.²⁷¹

Overall, the portion of the *Voter Guide* authored by the government leaves a relatively positive impression of Proposition 22. The first two pages provide the official title and summary, and an analysis by the Legislative Analyst.²⁷² The summary notes that the proposition will classify the drivers as independent contractors and that they will therefore not be "covered by

²⁶⁶ *Id.* at 30–39.

²⁶⁷ See *supra* note 3–7 and accompanying text (discussing that the Proposition 22 and the resulting law's language wrongly claims a government threat to drivers).

²⁶⁸ See *New Racial Wage Code*, *supra* note 225, at 527 (observing that even experienced analysts did not understand the basic terms of Proposition 22).

²⁶⁹ See *supra* note 178 and accompanying text (explaining that the Act requires a seven-eighths legislative supermajority to amend); TEXT OF PROPOSED LAWS, *supra* note 7, at 30 (noting that the purpose of the Act is to classify drivers as independent contractors and not as employees).

²⁷⁰ *California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)*, BALLOTPEDIA, https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative (last visited Nov. 20, 2025).

²⁷¹ *New Racial Wage Code*, *supra* note 225, at 527, n.76.

²⁷² OFFICIAL VOTER INFORMATION, *supra* note 260, at 56–57.

various state employment laws—including minimum wage, overtime, unemployment insurance, and workers’ compensation,”²⁷³ but it also observes that the drivers would instead “be entitled to other compensation—including minimum earnings, healthcare subsidies, and vehicle insurance.”²⁷⁴

The drivers’ potential benefits from Proposition 22 were reinforced by the Legislative Analyst’s analysis, which noted that the proposal “Gives Drivers Certain Benefits” and then, using bullet points, listed those benefits as an “[e]arnings [m]inimum,” “[h]ealth [i]nsurance [s]tipend,” payments for some injured drivers, a “[r]est [p]olicy,” and “[o]ther [r]equirements.”²⁷⁵ The earnings minimum is defined as 120% of minimum hourly wage for driving time not wait time.²⁷⁶ While the analysis quantified the length of wait time as one-third of the drivers’ time, it also maintained that most drivers are part-timers who “only work for a short time or only drive occasionally.”²⁷⁷ This gives the impression that the drivers will benefit from the wage increase, while the reality is more nuanced.

Both the ballot summary and the analysis note that the proposition would limit local government’s ability to impose additional rules.²⁷⁸ This vaguely informed the public that counties and cities would not be able to legislate to improve the drivers’ working conditions. As for the fiscal impact, the analysis predicts cost savings for platform firms, which are spared paying the drivers as employees; thus, the firms could “charge lower fares and delivery fees . . . [and] customers would take more rides and place more orders.”²⁷⁹ This implies that Proposition 22 would create significant benefits for the public.

The Legislative Analyst’s background information is incomplete. While it mentions that the drivers are hired as independent contractors, it fails to note that the contracts they sign with the firms prohibit them from contacting customers and setting their own prices.²⁸⁰ The background mentions that the state passed AB5, and that the Attorney General has sued two platform firms for misclassification, but also benignly states that the firms dispute that AB5 “makes their drivers employees.”²⁸¹ This narrative fails to capture the firms’ contentious compliance strategy.

²⁷³ *Id.* at 56.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 57. The other requirements are all positive: developing sexual harassment policies, conducting driver criminal background checks, and driver safety training. *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 56.

²⁷⁸ *Id.* at 56–57.

²⁷⁹ *Id.* at 57.

²⁸⁰ *Id.* at 56; *see supra* note 178 and accompanying text (stating that app-based drivers can neither set their own prices nor develop relationships with their customer base).

²⁸¹ *Id.* at 56.

In all, the government-authored portion of the *Voter Guide* provides an incomplete and ambiguous statement of the state's position on Proposition 22. This neutered discourse is mandated by California's Elections Code, which demands state neutrality rather than allowing the government to defend, in this case, decent work. In contrast, the proposition's advocates set the debate's terms.

In the *Voter Guide*, Proposition 22's proponents present AB5 as a "problem" and Proposition 22 as a "solution." In other words, their discourse articulated a policy problem that a new regulatory regime tailored to its business model would resolve. This is a standard rhetorical strategy of regulatory entrepreneurs.²⁸² The platforms' narrative on AB5 characterized the new law as "drastic" and an obstacle to autonomy and flexibility.²⁸³ Supporting this assertion is that the vast majority of drivers "*prefer* to work as independent contractors," and require "flexibility . . . to support their families."²⁸⁴ A quote from an authority—William Hamm, former nonpartisan Legislative Analyst—is used to illustrate these points and predict AB5's detrimental effects, including "much longer wait times [for drivers], significantly higher consumer prices, and the permanent shutdown of services in many areas—eliminating hundreds of thousands of jobs."²⁸⁵

The proponents then extoll the benefits of Proposition 22, which protects driver choice, improves the quality of app-based work, and "*creates* expanded public safety protections."²⁸⁶ This discourse is augmented by reference to the support of numerous associations and civil society groups, including the "California Small Business Association, California State NAACP, California Peace Officers' Association, National Hispanic Council on Aging, [and the] California Senior Advocates League."²⁸⁷ A demographic catalogue of those who will benefit from Proposition 22 draws a profile of the driver population: parents with school-age children, those caring for aging parents, retirees, students, all those "who need supplemental income" and "can't work set shifts."²⁸⁸ This affirmative and positive discourse focused on the drivers and deliverers themselves, with emphasis on the economy and preserving jobs.

As for the opponents, their discourse of labor rights and social justice begins with a driver's long quote from which the reader must extract important ideas. The driver contextualizes this battle as transpiring during the pandemic, when drivers were deemed essential workers, yet were not given Personal Protective Equipment or healthcare coverage if they

²⁸² See *supra* notes 92–93 and accompanying text (noting that generating and disseminating ideas, are forms of regulatory capture).

²⁸³ OFFICIAL VOTER INFORMATION, *supra* note 260, at 58.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

contracted COVID.²⁸⁹ The driver notes that prior to the pandemic, he drove full-time and mentions a recent study finding that “70% of . . . drivers work 30 or more hours a week . . . and our wages would be WORSE under Prop. 22.”²⁹⁰ The argument against Proposition 22 points out that the initiative is misleading and drafted by the platform firms’ lawyers with the aim of creating a legal exemption which will deny “driver[’s] basic rights and protections at work.”²⁹¹ The argument references many true facts, including how poorly the health and safety of the drivers was protected during the pandemic, and that “78% . . . are people of color.”²⁹²

The opponents’ discourse, both defensive and negative, ultimately failed to connect with a majority of California voters, many of whom likely misunderstood what a vote for the proposition would produce. With the government in retreat, regulatory entrepreneurs won the day with (1) institutional power provided by the initiative process, (2) ideational power deployed by an effective discourse, and (3) informational and financial power which drove a successful campaign. As for the government, the state system was usurped by the very forces it initially sought to control.

Next, this article considers how the status of app-based drivers was addressed in British Columbia.

2. *App-Based Drivers’ Status in British Columbia*

As in California, in British Columbia, classifying workers as either employees or independent contractors has significant legal and practical implications.²⁹³ BC employees are protected by the minimum employment standards required by the provincial Employment Standards Act (“ESA”).²⁹⁴ Independent contractors are not covered. The ESA specifies the province’s minimum wage, defines what constitutes working time, provides for overtime, sets forth employment termination requirements, mandates compensation for business expenses,²⁹⁵ provides for holiday pay and

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* at 59.

²⁹² *Id.*; CHRIS BRENNER, ERIN JOHANSSON, KUNG FENG & HAYS WITT, *ON-DEMAND AND ON-THE-EDGE: RIDE HAILING AND DELIVERY WORKERS IN SAN FRANCISCO*, U.C. SANTA CRUZ INST. FOR SOC. TRANSFORMATION 2, 4 (2020) (“78% of [San Francisco ride-hailing and delivery workers] are people of color . . .”).

²⁹³ See BC FED’N OF LAB., *WORKER RIGHTS IN THE GIG ECONOMY: ENSURING EQUAL EMPLOYMENT STANDARDS PROTECTIONS FOR ALL WORKERS 4* (2022), [hereinafter *ENSURING EQUAL EMPLOYMENT*] <https://bcfed.ca/sites/default/files/attachments/BCFED%20precarious%20work%20Sept%202022%20final%20web%20Sept%202022.pdf> (noting that misclassification of workers as independent contractors is a root cause of precarious work).

²⁹⁴ *About Working in British Columbia*, LEARNLIVE BC: WORK IN BRITISH COLUMBIA, <https://learnlivebc.ca/work/about-working-in-british-columbia> (last visited Jan. 24, 2026); see *ENSURING EQUAL EMPLOYMENT*, *supra* note 293, at 9 (noting that misclassification subverts ESA obligations).

²⁹⁵ *ENSURING EQUAL EMPLOYMENT*, *supra* note 293, at 11–13.

vacation time,²⁹⁶ and also requires paid sick leave.²⁹⁷ Additionally, employees in British Columbia are covered by workers' compensation for on-the-job injuries and are protected by occupational health and safety standards.²⁹⁸ Finally, employees are more likely to qualify for employment insurance when they lose a job than are independent contractors.²⁹⁹

In 2023, BC's app-based drivers in the rideshare and food delivery sectors won new rights and protections with the amendment of the Employment Standards Act and the Workers' Compensation Act ("WCA").³⁰⁰ These legal changes are significant and beneficial. The drivers are now considered employees for the purposes of the ESA and the WCA.³⁰¹ However, despite this recognition, the ESA amendments and two subsequent regulations create alternate standards for app-based drivers rather than applying the entire statute to them. The law provides, *inter alia*, a wage floor pegged at 120% of minimum wage for engaged time only,³⁰² a "distance expense allowance,"³⁰³ the right to a "wage statement," "assignment transparency," notice of and a procedure to contest suspensions, and notice of and a statement of cause for termination or payment in lieu where there is no cause.³⁰⁴

Even before the changes came into effect, some expressed disappointment over the failure to make all the ESA's provisions applicable to the drivers.³⁰⁵ Of particular concern was the application of the minimum earnings guarantee to engaged time only.³⁰⁶ As in California, this means that

²⁹⁶ *Id.* at 9.

²⁹⁷ See *Paid Sick Leave*, B.C. EMP., BUS. AND ECON. DEV. (Jan. 27, 2022), <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/paid-sick-leave>.

²⁹⁸ See ENSURING EQUAL EMPLOYMENT, *supra* note 293, at 14 (explaining BC worker compensation requirements and protections).

²⁹⁹ *Id.* at 9, 12.

³⁰⁰ Bill 48, Labour Statutes Amendment Act, 2023, 4th Sess., 42nd Parl. (B.C. 2023).

³⁰¹ *Id.*; see Alex Kagan, Fiona Brown & Victoria Carpenter, *New Regulations for Gig Workers in Ontario and British Columbia*, AIRD BERLIS (July 16, 2025), <https://www.airdberlis.com/insights/publications/publication/new-regulations-for-gig-workers-in-ontario-and-british-columbia> (reporting that, in BC, online platform workers are considered employees for the purposes of the ESA and WSC).

³⁰² See *Employment Standards Regulation*, B.C. Reg. 396/95, Section 1(b)(4) (defining engaged time as when an app-based driver accepts an assignment and completes the said assignment, or the assignment is otherwise cancelled); Press Release, B.C., Fairness Coming for Gig Workers, (Nov. 16, 2023), <https://news.gov.bc.ca/releases/2023LBR0030-001799> (noting an earnings standard of 120% of B.C. minimum wage sets the standard for app-based drivers).

³⁰³ Duncan Burns-Shillington, Aaron Johnson, Tea Mamic & Justine Pileggi, *British Columbia: Gig Worker Regulations Take Effect*, DLA PIPER GENIE (Sept. 19, 2024), <https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2024/British-Columbia-Gig-worker-regulations-take-effect>.

³⁰⁴ *Id.*

³⁰⁵ See Fife Ogunde, *Bill 48 and Online Platform Workers in British Columbia: A Brief Comment*, 82 ADVOC. (VANCOUVER) 351 (2024) (noting criticism that the standards did not guarantee pay for waiting periods).

³⁰⁶ *Id.*

significant time expended by the drivers remains uncompensated. Additionally, there are numerous ESA provisions that do not apply to the drivers, including “hours of work and overtime; statutory holidays; paid leaves; and annual vacation.”³⁰⁷ Finally, the legal changes do not expressly provide for the protection of the right to collectively bargain.³⁰⁸

A recent, historic development, however, moots this last concern. In July 2025, the BC Labour Relations Board certified a unit of more than 500 Uber drivers in Victoria, who will be represented by United Food and Commercial Workers (“UFCW”) Local 1518.³⁰⁹ Notably, the Labour Board’s bargaining unit description classifies the unit as “dependent contractor drivers . . . except Uber Eats drivers” rather than classifying the workers as employees.³¹⁰ Uber has indicated that it will bargain.³¹¹

Presently, there are no published studies of the effects of BC’s legal changes. Yet as noted above, the government presented the changes as only the first phase of reform. Below, we consider the role the government played in arriving at these new labor standards. As we demonstrate, unlike California, the BC government imposed its own agenda and consistently maintained an ontological distance from the platform firms’ demands and narrative due to a three-step process.

i. Examining the Government’s Communications

As the province emerged from the COVID-19 pandemic, improving the conditions of gig workers was articulated as a mandate priority by Premier John Horgan.³¹² In his February 2022 mandate priority letter to Minister of Labour Harry Bains (NDP), Horgan focused on the “New Economy,” and directed Bains to:

- Work with labour and business organizations to develop a precarious work strategy that reflects modern workplaces’ diverse needs and unique situations.

³⁰⁷ Fairness Coming for Gig Workers, *supra* note 302. However, the BC government noted that while no standards will be established on those subjects “at this time,” government monitoring will continue. *Id.*

³⁰⁸ Joel Bakan & Sujit Choudhry, *Constitutional Labour Rights in the Gig Economy: Digital Platform Workers and Section 2(d) of the Charter*, 70 MCGILL L.J. 443, 473 (2025).

³⁰⁹ Akshay Kulkarni, *Uber Drivers in Victoria Granted Union Certification*, CBC (July 3, 2025), <https://www.cbc.ca/news/canada/british-columbia/victoria-uber-drivers-unionize-1.7575942>. The Labour Board relied on BC’s card check method of certification, which allows bypassing an election where 55% of a unit sign union authorization cards. *Id.*

³¹⁰ *Certifications*, B.C. LAB. RELS. BD., https://www.lrb.bc.ca/certifications?certification_number=336327 (last visited Jan. 24, 2026).

³¹¹ Kulkarni, *supra* note 309.

³¹² Letter from John Horgan, Premier of British Columbia, to Harry Bains, British Columbia Minister of Labour 4 (Feb. 25, 2022) [hereinafter *Horgan Letter*] (on file with Government of British Columbia), https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/lbr-bains-mandate_2022_-_secured.pdf.

- As part of the precarious work strategy, propose employment standards targeted to precarious and gig economy workers³¹³

A central part of Horgan’s agenda for Bains was creating “new consultative mechanisms to engage employer and worker representatives in consideration of any changes proposed to workplace legislation to ensure the widest possible support.”³¹⁴ Thus, Bains was directed to work towards substantive legal change by engaging in a process designed to elicit a broad variety of stakeholder concerns.

The following month, Bains, himself a former trade unionist, gathered with leaders from the UFCW and Uber to discuss possible improvements in the drivers’ working conditions.³¹⁵ Subsequently, the union and the platform firm had numerous contacts with Bains and his staff about possible improvements in driver pay and protections.³¹⁶ There is nothing novel with such contacts, which are easily characterized as lobbying.

In November 2022, however, the Ministry of Labour began formal public consultations aligned with Premier Hogan’s priorities, including in-person roundtable discussions with 150 app-based ride-hailing and food delivery workers across the province who represented a diverse group, including full-time and part-time workers, “students, retirees and recent immigrants”³¹⁷ The Ministry also engaged with a broad range of stakeholders—“platform companies, business associations,” trade unions, “non-profit[s] . . . , academics and researchers”³¹⁸—through virtual meetings.³¹⁹ Some stakeholders submitted written statements.³²⁰ Additionally, a public survey was conducted in six languages to reach “current or former app-based ride-hail and food delivery workers” and members of the public.³²¹ Close to 1,500 surveys were completed with seventy-five percent of the surveys being completed by current or former drivers.³²²

³¹³ *Id.*; see *MLA: Hon. Harry Bains*, LEGIS. ASSEMBLY OF B.C., <https://www.leg.bc.ca/members/42nd-Parliament/bains-harry> (last visited Jan. 24, 2026) (noting that Harry Bains is a member of the NDP).

³¹⁴ *Horgan Letter*, *supra* note 312, at 3.

³¹⁵ Zak Vescera, *What’s Ahead for BC Gig Workers*, TYEE (Sept. 27, 2023), <https://theyee.ca/News/2023/09/27/Whats-Ahead-BC-Gig-Workers>; see *MLA: Hon. Harry Bains*, *supra* note 313 (“[Harry Baines] was an elected officer of Steelworkers-IWA Canada Local 2171 for over 15 years. He served most recently as vice-president of his local, where he led negotiations and engaged in bargaining for better working conditions for working people.”).

³¹⁶ Vescera, *supra* note 315.

³¹⁷ WHAT WE HEARD, *supra* note ††, at 3.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² See *id.* (noting that 1,106 of the 1,470 surveys were completed by individuals with experience as “app-based ride-hail and food-delivery workers”).

In April 2023, the Ministry published the public engagement’s results in a report titled *What We Heard*, which was translated into seven languages.³²³ From the start, the report positions the government as controlling the process. Tackling the working conditions of app-based drivers and proposing “appropriate employment standards” was a BC government “priority initiative” tied to an important public policy aim: “to make work more reliable and less precarious.”³²⁴ Because of the government’s outreach to a broad array of stakeholders, the report presents the Ministry as listening, analyzing different perspectives and data, and promising solutions that will reduce worker vulnerability. Beginning with the workers themselves, the report sets forth key themes voiced by ride-hail and delivery drivers, platform companies, worker organizations, business associations, academics and researchers, and members of the public.³²⁵ The report then pulls the threads of the different perspectives together and presents common points of agreement and disagreement.³²⁶ A brief conclusion commits the government to continuing the conversation on the subject.³²⁷

In *What We Heard*, the government takes no position on most issues except for aiming to better the drivers’ working conditions. For example, regarding driver status, the report states that many experts and trade unionists believe it imperative to tackle the misclassification of drivers as independent contractors.³²⁸ The drivers should, these advocates argued, be classified as employees.³²⁹ The report then notes that “platform companies argued the opposite—that workers should *not* be considered employees.”³³⁰ In fact, some platform companies held firm that the drivers are independent contractors while others “implied the creation of a new legal category for app-based workers could be an appropriate approach”³³¹ Additionally, the report notes that “immigrant-serving organizations” emphasize that many drivers are “newcomers to Canada” who were not aware of the legal distinction between employees and independent contractors.³³²

By recounting diverse perspectives while declining to take public positions on them, the government provided itself with time and flexibility to arrive at the most broadly acceptable solutions for achieving its goals. That said, there were points in the report where the government contested the platform firms’ factual claims. For example, while the report notes the

³²³ See News Release, B.C., Gig Work ‘What We Heard’ Rep. Available Online (Apr. 11, 2023), [hereinafter Gig Work Available Online] <https://news.gov.bc.ca/28533> (announcing the publication of the report and containing links to the seven translated versions of the report).

³²⁴ WHAT WE HEARD, *supra* note ††, at 2.

³²⁵ *Id.* at 5–16.

³²⁶ *Id.* at 17–19.

³²⁷ *Id.* at 20.

³²⁸ *Id.* at 18.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

companies’ assertion that drivers only engage in platform work “a few hours a week and use it as a supplement,”³³³ the report also highlights survey statistics demonstrating that “gig work is not a ‘side hustle’—it is [the drivers’] livelihood.”³³⁴ The government’s general posture of neutral information gathering, however, predominated in the report. The next step, after taking in diverse perspectives, was to highlight four priority issues and begin to consider solutions.

ii. Government Consultation – Considering Solutions

Based on the initial public engagement, the Ministry developed a discussion paper, which it published in July 2023.³³⁵ *Proposing Employment Standards and Other Protections* situates the government not only as recognizing “the complexity of designing appropriate employment standards”³³⁶ for app-based workers, but as a voice of moderation contemplating a “phased approach” to regulatory change.³³⁷ While referencing the existing legal standards for employees in BC’s ESA, WCA, and the Occupational Health and Safety Regulation (OHSR), the government states: “We are interested in proposals for this sector, which may be the same as, or different from, the existing standards and protections”³³⁸ The report notes that simply extending ESA coverage to the sector would fail to address sector-specific problems like unfair deactivations and lack of pay transparency.³³⁹ The Ministry requested additional feedback and perspectives from stakeholders by the end of September 2023.³⁴⁰

The paper delineates four priority concerns gleaned from the initial engagement, which provide the context for considering suitable employment standards and protections for app-based ride-hail drivers and delivery workers.³⁴¹ “[Those concerns are]:

1. Fair compensation standards
2. Pay and destination transparency
3. Account suspensions, deactivations, and terminations

³³³ *Id.* at 11.

³³⁴ *Id.* at 5.

³³⁵ PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15. Both a full report and a shorter Workers version of the report were published. *See id.* at 2 (mentioning that a summary of the key themes is available in a separate report for workers); *see, e.g.*, B.C. MINISTRY OF LAB., PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS FOR APP-BASED RIDE-HAIL AND FOOD-DELIVERY WORKERS IN BRITISH COLUMBIA *WORKERS VERSION (2023), <https://engage.gov.bc.ca/app/uploads/sites/121/2023/08/Desktopped-DP-FOR-WORKERS-August-3-2023-FINAL.pdf>.

³³⁶ PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15, at 2.

³³⁷ *Id.*

³³⁸ *Id.* at 4.

³³⁹ *Id.* at 3.

³⁴⁰ *Id.* at 19.

³⁴¹ PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15, at 2–3.

4. Workers' compensation and occupational health and safety coverage³⁴²

For each issue, a section on what stakeholders previously communicated was set forth. For example, on the issue of minimum wage, the paper notes that many drivers reported that their net income is below BC's minimum hourly wage.³⁴³ In contrast, the platform firms argue that because earnings "vary based on when and where [drivers] choose to work," some drivers earn more than the legal minimum.³⁴⁴ However, the latter assertion is troubled and qualified when the government notes that these estimates are "based on workers' gross income, including tips."³⁴⁵ Excluding tips and vehicle expenses, however, reveals the unfairness in the compensation standards.

After reviewing what stakeholders previously communicated for each issue, the government next sets forth the policy context and considerations involved in crafting legal solutions for the concern. For the matter of fair compensation, the paper notes that drivers are typically paid only for engaged time and that it is possible to establish a sector-specific minimum wage that differs from BC's general minimum wage if the "alternative . . . better meets the needs of workers and employers in the sector."³⁴⁶ Considerations for a new employment standard include whether unengaged time should be part of compensated time, how such a change might "impact . . . worker flexibility,"³⁴⁷ and the effects of such a change on company costs, consumer prices, labor productivity, and "traffic congestion and emissions."³⁴⁸

Finally, a third section for each concern poses relevant discussion questions for consideration. For fair compensation, the government queries what should the minimum wage be for these workers and "how should it be structured," then sets forth two legal approaches to that question, and encourages stakeholders to send feedback.³⁴⁹

The government's consultation reflected its willingness to adopt an inclusive approach, aimed at grasping the complexity of the economic, social, societal, and legal issues related to digital platform work. Collaboration was the government's stated methodology. As Minister of Labour Harry Bains put it, "[w]e are working together with workers, with platform companies and with others on solutions to improve working conditions and protections."³⁵⁰ Parliamentary Secretary of Labour Janet Routledge (NDP) framed the government's role and aims this way: "Gig

³⁴² *Id.* at 4.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15, at 4.

³⁴⁶ *Id.* at 6.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 6–7.

³⁵⁰ Gig Work Available Online, *supra* note 323.

workers, like everyone who works in our province, deserve to be treated fairly. That is the foundation of our effort to make work more reliable and less precarious.”³⁵¹

BC’s efforts were embedded in an ideational and discursive dynamic. The ideas were mobilized not only to justify planned regulatory intervention, but also to frame those anticipated efforts as in the public interest. This rhetorical strategy reflects *input legitimacy*, the idea that the government’s actions *for* the people are guided by what the government heard *from* the people.³⁵² The ideas emphasize fairness and the need for regulatory action, and reinforce the point by referencing the public engagement participants’ approval of this course of action.³⁵³ The more the ideas are framed in terms of the public interest, the more legitimate they become.³⁵⁴

Planned regulatory intervention was also legitimized through the governance process itself. BC’s multi-step public engagement created *throughput legitimacy*, which focuses on the quality of governance.³⁵⁵ The public engagement was transparent, relied on stakeholder consultation, and facilitated the collection of reliable information. The resulting report and discussion paper enabled the government to frame the issues according to its political priorities, while synthesizing stakeholder views to stay aligned with the government’s goals.

Listening to the broader community was a distinctive feature of BC’s methodology.³⁵⁶ The government’s proposed solutions, once they were announced, were framed as the product of a communal effort to address

³⁵¹ *Id.*; see *MLA: Janet Routledge*, LEGS. ASSEMBLY OF B.C.: MEMBERS OF THE LEGS. ASSEMBLY, <https://www.leg.bc.ca/members/43rd-Parliament/Routledge-Janet> (last visited Jan. 26, 2026) (noting that Janet Routledge is a member of NDP).

³⁵² See Schmidt, *supra* note 30, at 320 (noting that the state’s legitimacy is derived through a bottom-up interactive dynamic with the people); see also Martin B. Carstensen & Vivien A. Schmidt, *Ideational Power and Pathways to Legitimation in the Euro Crisis*, 25 REV. INT’L POL. ECON. 753, 757–58 (2018) [hereinafter *Ideational Power and Pathways*] (“Input legitimacy depends . . . on the extent to which policy choices reflect ‘the will of the people,’ which is predicated on citizens’ engagement in representative processes and government responsiveness to citizens’ concerns . . .”).

³⁵³ See PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15, at 2 (“Many engagement participants agreed that appropriate employment standards and other protections for the workers are needed . . .”).

³⁵⁴ See Colm McLaughlin & Chris F. Wright, *The Role of Ideas in Understanding Industrial Relations Policy Change in Liberal Market Economies*, 57 INDUS. RELS. 568, 572 (2018) (noting that “actors are rarely successful in achieving policy change by arguing on the basis of self-interest and may frame ideas in terms of a wider public interest to gain legitimacy”).

³⁵⁵ Throughput legitimacy “depends on the quality of the policy making processes . . .” *Ideational Power and Pathways*, *supra* note 352, at 758. See generally Vivien Schmidt & Matthew Wood, *Conceptualizing Throughput Legitimacy: Procedural Mechanisms of Accountability, Transparency, Inclusiveness and Openness in EU Governance*, 97 PUB. ADMIN. 727 (2019) (discussing throughput legitimacy as a “procedural criterion concerned with the quality of governance processes,” encompassing accountability, transparency, inclusiveness, and openness).

³⁵⁶ See Vasconcelos & Hall, *supra* note 132, at 60 (stating that a “*Made in B.C.* ideology” stems from communal efforts “to advance economical and entrepreneurial alternatives that take social, cultural and environmental peculiarities into consideration”).

provincial concerns about services important to British Columbians, including the drivers and the customers.³⁵⁷ By listening, collecting data, formulating a policy response, and offering a coherent and convincing narrative grounded in shared values, BC engaged in the discursive groundwork necessary for public policy acceptance, known as *output legitimacy*.³⁵⁸

iii. Announcing and Securing Proposed Solutions

Having set the stage for legislative action, the Ministry acted quickly to realize the final step: announcing and securing solutions. The process of adopting law and regulations was short and dominated by the government. There was only about a year between the end of the public engagement and the effective date of legislative changes and new regulations.

On November 16, 2023, the Ministry issued a press release promising beneficial change and quoting Minister of Labour Bains: “The workers who appear at the touch of a button to drive us home or deliver our dinner deserve to be treated fairly.’ . . . ‘That’s why we’re taking action to address the problems that the workers themselves raised.”³⁵⁹ Framed in terms of fairness and problems raised by the drivers and legitimized by the broad-based public engagement, the government noted that “solutions require legislative changes that enable new regulations to be developed.”³⁶⁰ Moreover, the changes would come into effect only after a bill was passed and new regulations were finalized.³⁶¹

The government’s statements were bolstered in the press release by driver quotes, one of which noted that this will be a “‘first, and . . . very crucial, step” towards improving working conditions,³⁶² and “[q]uick [f]acts” demonstrating how many people work in the sector (38,000 total), how many platform firms operate in BC (twenty-one ride-hailing companies, some multi-national and some local; seven food delivery firms), and how the pandemic had impacted the use of app-based food delivery (32% of people in BC had food delivered “at least once every two weeks”).³⁶³

Thereafter, the press release’s “backgrounders” provided details on proposed standards for the drivers, which included the minimum earnings

³⁵⁷ See PROPOSING EMPLOYMENT STANDARDS AND OTHER PROTECTIONS, *supra* note 15, at 2 (noting that app-based services are “a valued part of life in this province”); WHAT WE HEARD, *supra* note ††, at 20 (“[T]his work has become an important part of economic life in B.C. It provides a flexible way of earning income that a growing number of workers rely on, and the ride-hail and food-delivery services they provide are valued by people across B.C.”).

³⁵⁸ Output legitimacy “depends on the extent to which policy choices provide for the common good . . . in terms of policy results.” *Ideational Power and Pathways*, *supra* note 352, at 757.

³⁵⁹ *Fairness Coming for Gig Workers*, *supra* note 302.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.* (quoting ride-hailing driver Inder Raj Gill).

³⁶³ *Id.*

standard of 120% of BC’s minimum wage, an expense standard, tip protections, pay transparency, destination transparency, procedures for suspensions and terminations, and workers’ compensation coverage.³⁶⁴ This signaled to the public that the drivers would not be treated as employees for all purposes, a point reinforced in the press release by the government’s list of areas that would not apply to them: “hours of work and overtime; statutory holidays; paid leaves; and annual vacation.”³⁶⁵

Finally, the press release articulated the legislative approach that would be taken. Specifically, the ESA and WCA would be amended to define the drivers as employees for the purposes of the statutes.³⁶⁶ However, the government qualified the statement by noting that the protections in the ESA and WCA would apply across the sector regardless of whether the drivers were found to be employees or not under any other law.³⁶⁷ The rationale for treating the drivers as something other than standard employees was protecting the workers’ flexible working conditions and addressing their most pressing concerns.³⁶⁸

The following week, on November 20, 2023, Bains announced that he was tabling legislation to accomplish the government’s agenda.³⁶⁹ Bill 48—Labour Statutes Amendment Act, 2023 sped through its first, second, and third readings, was passed overwhelming by BC’s Legislative Assembly, and received royal assent on November 30, 2023.³⁷⁰ A number of opposition leaders balked at the brevity of the legislation, which amended the ESA and WCA by adding a new definition of “online platform worker” and noting that for the purpose of those statutes: “an online platform worker is to be considered an employee” and “the operator of the online platform . . . is to be considered the employer . . .”³⁷¹ Clearly, the NDP intended for the details of the drivers’ working conditions and protections to be supplied through

³⁶⁴ Fairness Coming for Gig Workers, *supra* note 302.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ Press Release, B.C. Gov News, Legislative Changes Will Bring Fairness to App-Based Gig Workers (Nov. 20, 2023), <https://news.gov.bc.ca/29891>.

³⁷⁰ See LEGIS. ASSEMB. OF B.C., 42ND PARLIAMENT, OFFICIAL REPORT OF DEBATES (HANSARD), Issue No. 362 (4th Session 2023) (Can.) (including introduction and first reading of the bill); LEGIS. ASSEMB. OF B.C., 42ND Parliament, OFFICIAL REPORT OF DEBATES (HANSARD), Issue No. 366 (4th Session 2023) (Can.) (including second reading of the bill); LEGIS. ASSEMB. OF B.C., 42ND PARLIAMENT, OFFICIAL REPORT OF DEBATES (HANSARD), Issue No. 372 (4th Session 2023) (Can.) (including third reading of the bill and passage of the bill by a 76-2 margin); LEGIS. ASSEMB. OF B.C., 42ND PARLIAMENT, OFFICIAL REPORT OF DEBATES (HANSARD), Issue No. 375 (4th Session 2023) (Can.) (including royal assent to the bill).

³⁷¹ Bill 48, Labour Statutes Amendment Act, 4th Session, 42nd Parliament, B.C., 2023, cls. 1, 2, 8, 9; see, e.g., LEGIS. ASSEMB. OF B.C., 42ND Parliament, OFFICIAL REPORT OF DEBATES (HANSARD), Issue No. 366 (4th Session 2023) (Can.) (providing statement by G. Kylo regarding the opposition’s disfavor with the bill’s lack of detail).

regulation rather than being debated by the Legislative Assembly. Indeed, Bill 48 added regulation-making authority to both the ESA and the WCA.³⁷²

Those regulatory details were announced as finalized on June 12, 2024.³⁷³ Within a few days, an Order of the Lieutenant Governor in Council issued, announcing that effective September 3, 2024, both the Labour Statutes Amendment Act, 2023 would be brought into force and the Employment Standards Regulation³⁷⁴ would be amended as prescribed in an attached schedule.³⁷⁵

These actions completed the law, detailing the rights and protections of British Columbian app-based drivers in the transportation and delivery sectors. The government exercised extraordinary control over law-making in both process and substance. Its dominant position was strengthened and legitimized by extensive public engagement with stakeholders, as well as the BC system of government, a British-inspired parliamentary system, which allows the head of government and the ministers to combine legislative and executive functions.³⁷⁶ When a party wins a majority in the Legislative Assembly, as did the NDP, it can control the legislative process.³⁷⁷ These institutional structures enabled the government to articulate a clear message and ensure that its ideas became effective.

As we have noted, in terms of outcome, the law regulating app-based drivers in BC overlaps with that in California. For example, neither the province nor the state treats drivers as regular employees. In both, for example, drivers are paid for engaged time only, and there are many employment benefits for which they are ineligible. Yet there are important differences between these case studies. One important difference, we think, is that, unlike the California drivers, the BC drivers are not locked into sub-par working conditions. Importantly, the BC government continues to prioritize “creating good jobs,”³⁷⁸ a reference to decent work. Indeed, in his 2025 mandate letter to Minister of Labour Jennifer Whiteside (NDP), Premier David Eby (NDP) stated as a mandate priority:

Review the implementation of gig worker protections to ensure they are delivering meaningful and intended

³⁷² Bill 48, Labour Statutes Amendment Act, 4th Session, 42nd Parliament, B.C., 2023, cl. 11.

³⁷³ Press Release, B.C., Fair Pay, Basic Protections Coming for Gig Workers (June 12, 2024), <https://news.gov.bc.ca/31059>.

³⁷⁴ Employment Standards Regulation, B.C. Reg. 396/95 (Can.).

³⁷⁵ Province of British Columbia, Order of the Lieutenant Governor in Council No. 340 (June 17, 2024), https://www.bclaws.gov.bc.ca/civix/document/id/oic/oic_cur/0340_2024.

³⁷⁶ *About the Legislative Assembly*, LEGS. ASSEMBLY B.C., <https://www.leg.bc.ca/learn/discover-your-legislature/about-the-legislative-assembly> (last visited Jan. 30, 2026).

³⁷⁷ *See id.* (noting that the leader of the majority party forms a government where the leader of the majority becomes the premier and advises in appointing an executive cabinet).

³⁷⁸ Letter from David Eby, Premier, B.C., to Jennifer Whiteside, Minister of Lab., B.C. (Jan. 16, 2025), https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet/mlas/minister-letter/mandate_letter_jennifer_whiteside.pdf.

outcomes to gig workers. Refine or replace any regulations that are not achieving the intended outcomes.”³⁷⁹

Below we compare our California and BC case studies to determine whether one should deem the governments’ actions as assisting regulatory capture or defending decent work.

C. *Regulatory Capture or Defense of Decent Work?*

Overall, regarding outcomes, while there is much room for improvement, conditions for app-based drivers in British Columbia are superior to those in California. We begin by considering substantive areas of overlap and then highlight where BC bests California. Ultimately, these outcomes, and the consistent efforts of BC officials, reveal a government acting to defend and achieve decent work. California’s experience, in contrast, serves not only as a classic case of platform capture, but also one where the state, due to divisions among government actors, institutional constraints, and an effective opponent wielding a powerful tool (the initiative process), failed to secure and defend decent working conditions for the drivers.

1. *Overlap in Substantive Outcomes*

Certainly, there are areas where the drivers’ outcomes overlap. The first area is the drivers’ earnings guarantee. In both jurisdictions, the earnings guarantee is calculated at 120% of the jurisdiction’s minimum wage. The guarantee, however, is for engaged time only. In California, this results in drivers earning sub-minimum wages when considering time spent waiting for an assignment.³⁸⁰ Low wages are also reported in BC, with drivers noting that the new regulations on driver pay fall short.³⁸¹ A key difference between the two jurisdictions, however, is that in BC, Labour Minister Whiteside continues to review the efficacy of the regulations,³⁸² while in California, the law was designed to be almost impossible to amend.³⁸³ Thus, while low pay indicates a deviation from decent work standards, the problem is being

³⁷⁹ *Id.* See *MLA: Hon. Jennifer Whiteside*, LEGS. ASSEMBLY B.C., <https://www.leg.bc.ca/members/43rd-Parliament/Whiteside-Jennifer> (last visited Jan. 30, 2026) (noting that Jennifer Whiteside is a member of NDP); *MLA: Hon. David Eby, K.C.*, LEGS. ASSEMBLY B.C., <https://www.leg.bc.ca/members/43rd-Parliament/Eby-David> (last visited Jan. 30, 2026) (noting that David Eby is a member of NDP).

³⁸⁰ See *supra* note 9 and accompanying text.

³⁸¹ Isaac Phan Nay, *Uber Drivers Say BC Gig Work Protections Fall Short*, TYEE (Jan. 27, 2025), <https://thetyee.ca/News/2025/01/27/Uber-Driver-BC-Gig-Work-Protections-Fall-Short>.

³⁸² *Id.*

³⁸³ See *supra* note 179 and accompanying text (noting that amendments to the California law require a seven-eighths majority).

monitored by the Labour Ministry.³⁸⁴ If BC is to make good on its promise to reduce worker precarity, that monitoring must produce solutions.

Related to fair pay is the prohibition in both jurisdictions on withholding the drivers' tips or making deductions from them. While this might evidence fair pay, the issue is complicated. In the U.S., tipping dates to the antebellum period and the practice of paying slaves a small sum for excellent service.³⁸⁵ The practice continued after emancipation, and modernly has become a justification for tipped workers being paid subminimum wages, at least in some states.³⁸⁶ Paying tipped workers subminimum wages results in pay insecurity because their earnings depend in significant part on customer beneficence.³⁸⁷ The issue of gratuities in the app-based transportation and delivery sector creates the same effect—pay insecurity—and provides a rationale for paying subminimum wages. In fact, the policy on tips is cited by the platform firms as justification for compensating the drivers for engaged time only.³⁸⁸ That many drivers are racial and ethnic minorities and immigrants, adds an additional troubling dimension.³⁸⁹

Finally, in both California and BC, a mileage or distance allowance is paid to the drivers. In both cases, that allowance is significantly less than the drivers would receive if they were able to claim reimbursement as regular employees.³⁹⁰ To the extent this contributes to deficient earnings, the reimbursement deviation is contrary to principles of decent work.

³⁸⁴ Nay, *supra* note 381.

³⁸⁵ NINA MAST, ECON. POL'Y INST, TIPPING IS A RACIST RELIC AND A MODERN TOOL OF ECONOMIC OPPRESSION IN THE SOUTH 1–2 (2024), <https://www.epi.org/publication/rooted-racism-tipping>.

³⁸⁶ *Id.* at 2–3.

³⁸⁷ *Id.* at 3.

³⁸⁸ In fact, this claim is made by Keerthana Rang, communications lead for Uber in Canada, who argues, “The [earnings] guarantees exclude tips and are just a minimum, which means drivers still have the opportunity to earn more than that.” Nay, *supra* note 381 (quoting Keerthana Rang).

³⁸⁹ See *New Racial Wage Code*, *supra* note 225, at 514–15 (noting that sixty-nine percent of Lyft's U.S. drivers identify as racial minorities and that, in 2019, immigrants and people of color comprised seventy-eight percent of Uber and Lyft drivers in the San Francisco Bay Area).

³⁹⁰ The mileage reimbursement for California's app-based drivers is thirty-six cents per mile. CAL. BUS. & PROF. CODE §7453(d)(B)(ii)–(iii) (West 2025) (setting per mile compensation for vehicle expenses at thirty cents and requiring that the rate be adjusted annually to account for inflation by the Treasurer's Office); *Per-Mile Compensation Annual Adjustment for App-based Drivers*, CAL. STATE TREASURER'S OFFICE, <https://www.treasurer.ca.gov/prop-22.asp> (last visited Nov. 19, 2025) (announcing that thirty-six cents is the 2025 per mile compensation rate for app-based drivers). The rate for all other employees, however, is seventy cents per mile. Treas. Reg. § 1.274-5(g)(2)(iii) (2010) (authorizing a mileage allowance for employees); I.R.S. Notice 2025-5, 2025-3 I.R.B. 426 (Jan. 13, 2025) (announcing that seventy cents is the standard mileage reimbursement rate for 2025 employees). The distance expense allowance for British Columbia's app-based ride-hailing drivers is forty-five cents per kilometer, and the allowance for those working in delivery services is thirty-five cents per kilometer. Employment Standards Regulation, BC Reg. 396/95 (Can.). This compares with the prescribed rate for regular employees, which is sixty-six cents per kilometer. Income Tax Regulation, C.R.C., c. 945 (Can.).

2. *Differences in Substantive Outcomes and Actions*

Despite the overlap, three points support our conclusions about BC's efforts as defending decent work. First, by creating an inclusive definition of "online platform worker" and integrating its new sectoral regulatory framework into BC's Employment Standards Act, BC took significant steps to address precarious work. Recognizing the drivers' status as employees within the ESA and the Workers' Compensation Act not only increases job security,³⁹¹ but also creates conditions for enhanced health and safety protection.³⁹²

Second, BC, in less than a year after the new law and regulations came into force, facilitated the drivers' access to unionization and collective bargaining, which will allow them to enjoy these fundamental rights. Beginning with the drivers in Victoria, whose bargaining unit was recently certified, negotiation should also improve working conditions, provided the platform firms act in good faith.³⁹³

Third, BC is taking a phased approach to regulatory improvement.³⁹⁴ So long as the NDP remains the majority party, gains for the drivers through the democratic process should be incremental. But even if the government changes hands, the province during the period we analyze has defended decent work. As noted above, the government dominated the process leading to positive regulatory change.³⁹⁵

In sum, BC laid the groundwork for ensuring the drivers' app-based work is decent work. BC's success may be attributed to the government's lengthy hesitancy to allow platform firms to operate in the province.³⁹⁶ Unable to enter the BC market for a significant period, the firms could not deploy a strategy of stalling and contentious compliance to stymie reform.³⁹⁷ Without access to customers, network effects related to consumer dependency were forestalled,³⁹⁸ as were strong ties to drivers and government actors.³⁹⁹ Finally, BC government officials had strong ties to the powerful taxi sector, which opposed the entrance of the platforms.⁴⁰⁰ These

³⁹¹ BC regulations provide for procedures for driver suspensions and terminations. *See supra* note 304 and accompanying text.

³⁹² *See supra* note 298 and accompanying text.

³⁹³ *See supra* note 309 and accompanying text.

³⁹⁴ *See supra* note 335 and accompanying text.

³⁹⁵ *See supra* Part III.B.2.

³⁹⁶ *See supra* Part III.A.

³⁹⁷ *See generally* Joanna Mazur & Marcin Serafin, *Stalling the State: How Digital Platforms Contribute to and Profit from Delays in the Enforcement and Adoption of Regulations*, 56 COMPAR. POL. STUD. 101 (2023) (describing platform firms' "stalling strategies" and how they hinder state regulatory responses).

³⁹⁸ *See* Pollman & Barry, *supra* note 65, at 400–06 (detailing how platform companies, once widely adopted, may leverage their consumer base to constrain governmental regulatory efforts).

³⁹⁹ In contrast, platform firms had strong ties to California Governor Newsom since 2014. *Don't Stifle Innovation*, *supra* note 131.

⁴⁰⁰ Vasconcelos & Hall, *supra* note 132, at 55, 63.

factors enabled BC to keep its distance from the platforms and to employ a discourse distinct from them.

The outcomes in California represent a paradigm of platform capture. Through use of the voter initiative process, the platform firms displaced the state and implemented legislation tailored to their low-cost labor business model.⁴⁰¹ We acknowledge that California initially positioned itself as a defender of decent work. The California Supreme Court issued the pro-worker *Dynamex* decision, the state legislature passed and the Governor signed AB5,⁴⁰² and California's Attorney General prosecuted Uber and Lyft for misclassifying their drivers.⁴⁰³ Still, the platform firms won the battle.

What role did the government play in its defeat? Through action and inaction, the state created space for precarious work to take root. Unlike BC, during the debate over and passage of AB5 and Proposition 22, the executive did not effectively control the process. Instead, regarding AB5, the Governor attempted to broker a negotiated solution, thereby implicitly endorsing the platforms' claim that the drivers should not be classified as employees.⁴⁰⁴ Regarding Proposition 22, the government's actions were divided. While the Attorney General sued the platforms and Assemblywoman Gonzalez acted as an opponent of Proposition 22, the Governor refused to take a position, and the Attorney General was bound by California election law to communicate neutrally about the proposition in the *Voter Guide*.⁴⁰⁵ This created a muddled message to the public about the advisability of Proposition 22. Note that all of these government actors were Democratic Party members. Yet the California Democratic Party is known not only as pro-labor, but also, to a great extent, until very recently, as tied to the technology firms of Silicon Valley.⁴⁰⁶ The firms were not seen by Governor Newsom as foreign invaders. They were homegrown entities.

In terms of outcomes, the law governing the drivers in California is not employment law but commercial law.⁴⁰⁷ The drivers are not employees with rights and protections. Instead, they are classified as independent contractors, yet with no ability to create customer relationships or set their own prices.⁴⁰⁸ They are not covered by workers' compensation or

⁴⁰¹ See *supra* Part III.B.1.ii–iii.

⁴⁰² See *supra* Part III.B.1.i.

⁴⁰³ See *supra* Part III.B.1.ii.

⁴⁰⁴ See *supra* notes 191–193 and accompanying text for deeper discussion on Governor Newsom's attempts to broker a deal in the face of AB5.

⁴⁰⁵ See *supra* Part III.B.1.

⁴⁰⁶ See Andrew Oxford, *Democratic Kingmaker Calls for Clean Break From Silicon Valley*, BLOOMBERG GOV'T (Apr. 16, 2025, 5:00 AM), <https://news.bgov.com/bloomberg-government-news/democratic-kingmaker-calls-for-clean-break-from-silicon-valley> (noting Newsom and other politicians' historic effort to balance fealty to California's technology sector and trade unions, and discussing Lorena Gonzalez's exhortations to Democrats that they must break from big tech in order to lure back blue-collar workers).

⁴⁰⁷ CAL. BUS. & PROF. CODE §§ 7448–7467 (West 2025).

⁴⁰⁸ From *AB5 to Proposition 22*, *supra* note 11, at 57.

occupational health and safety protections.⁴⁰⁹ The law itself appeared initially to attempt to deny the drivers the right to unionize and engage in collective bargaining.⁴¹⁰ Rather than looking at Proposition 22 as the first phase of reform, the Proposition sought to lock in place subpar terms and conditions of work.

As we completed this study, Governor Newsom and California political leaders announced an August 2025 “deal” with Uber and Lyft allowing app-based drivers in the transportation industry the chance to unionize while remaining independent contractors.⁴¹¹ The agreement, supported by the Service Employees International Union (“SEIU”), contained the platforms’ implicit promise that they would allow a bill providing for driver unionization and collective bargaining to advance in the legislature.⁴¹² Yet to extract the promise to eschew interference with the drivers’ fundamental rights, the government and SEIU agreed that they would back a different bill greatly reducing Uber’s and Lyft’s insurance obligations.⁴¹³

In a press release, Newsom noted, “Labor and industry sat down together, worked through their differences, and found common ground that will empower hundreds of thousands of drivers while making rideshare more affordable for millions of Californians.”⁴¹⁴ For Newsom, balancing between serving the tech companies’ interests and those of labor remains. The Governor achieves equilibrium through dealmaking rather than through the steadfast pursuit of fundamental rights and the elimination of precarity. Will this “landmark solution[]”⁴¹⁵ finally deliver decent working conditions for app-based drivers? Time will tell. We note that the new law became effective January 1, 2026, five years after the effective date of Proposition 22, which

⁴⁰⁹ See *supra* notes 170–171, 273 and accompanying text for deeper discussion on app-based driver’s lack of standard employment benefits.

⁴¹⁰ See *supra* note 178 and accompanying text (discussing potential impacts of the law on unionization).

⁴¹¹ Laura J. Nelson & Suhauna Hussain, *Newsom, California Lawmakers Strike Deal That Would Allow Uber, Lyft Drivers to Unionize*, L.A. TIMES (Aug. 29, 2025), <https://www.latimes.com/california/story/2025-08-29/california-lawmakers-strike-deal-to-allow-uber-lyft-drivers-to-unionize>.

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ Press Release, Robert Rivas, Speaker, California State Assembly, Governor Newsom, Pro Tem McGuire, Speaker Rivas Announce Support for Historic Legislation to Empower Gig Workers, Improve Rideshare Affordability (Aug. 29, 2025, 2:39 PM), <https://speaker.asmdc.org/press-releases/20250829-governor-newsom-pro-tem-mcguire-speaker-rivas-announce-support-historic>.

⁴¹⁵ *Id.* In October 2025, Governor Newsom “signed into law a deal” allowing “ride-hail drivers to unionize and bargain collectively while still being classified as independent contractors.” Suhauna Hussain & Melody Gutierrez, *Uber and Lyft Drivers Can Unionize Under New Law Signed by Newsom. How Does It Work?*, L.A. TIMES (Oct. 3, 2025, 5:32 PM). He “also signed a law backed by Uber and Lyft that would significantly reduce” the platforms’ insurance obligations. *Id.*

stripped the drivers of their rights as employees, and that “the earliest drivers could vote to unionize is May 1”⁴¹⁶

CONCLUSION

Our analysis of the state’s role in responding to the regulatory challenges posed by app-based ride-hailing and food delivery firms adds to the literature on capture. In short, the state plays a pivotal role in (de)standardizing work. This finding confirms our intuition and earlier research from 2017.⁴¹⁷

Examining substantive law reveals both the progress and setbacks in the platform workers’ legal rights. British Columbia is moving toward recognizing decent work, whereas California drifted away from it through restrictive legislation offering little protection and poor working conditions, which appeared largely inalterable.⁴¹⁸ Recent developments in California aimed at enabling app-based driver unionization could improve conditions if SEIU is ultimately able to negotiate change without being subject to federal and state antitrust law.⁴¹⁹ Two caveats remain. First, these workers are still classified as independent contractors and therefore will begin the negotiation with conditions far inferior to those of employees.⁴²⁰ If unionization produces for these workers only the bare entitlements they would receive as employees, the outcome will further highlight California’s failure. Second, this progress represents a negotiated compromise with the platform firms. Thus, in order to secure the drivers’ fundamental rights, California was willing to adjust its laws to the needs of the firms’ business plans.

BC, by contrast, exhibits the potential to advance toward decent work for the drivers, particularly through their inclusion in the province’s employment standards and workers’ compensation legislation.⁴²¹ Moreover, the ongoing unionization process—beginning in Victoria, BC, and presumably to expand elsewhere—demonstrates how BC has positioned itself as a describer and definer of change, a protector of substantive rights, and a guarantor against social risk and inequality.⁴²² This increase in platform workers’ rights remains fragile, is still in progress, and will need to evolve over time.

⁴¹⁶ See Laura Fitzgerald, *California Gig Drivers Gear Up for Union Rights in 2026*, KPBS (Dec. 23, 2025, 5:55 PM), <https://www.kpbs.org/news/economy/2025/12/23/california-gig-drivers-gear-up-for-union-rights-in-2026>.

⁴¹⁷ See Bisom-Rapp & Coiquaud, *supra* note 26, at 15 (noting that understanding the actions and inactions of government actors is critical when analyzing policy reform).

⁴¹⁸ See *supra* Part II.C.

⁴¹⁹ See Nelson & Hussain, *supra* note 411 (noting SEIU’s involvement in the recent 2025 deal). For a brief discussion on U.S. anti-trust law’s impact on unionization, see *supra* note 178.

⁴²⁰ See *supra* Part III.B.1.

⁴²¹ See *supra* Part III.B.2.

⁴²² See *supra* Part III.B.2.

Our legal analysis was combined with institutional and discourse analyses to explain how such outcomes emerged.⁴²³ Ultimately, the latter analyses reveal whether and how the platform firms succeeded or failed in their efforts at regulatory capture. This is one of the key contributions of our research. Our findings disclose major differences between California and BC.

Although both jurisdictions are considered progressive and pro-labor, the results for app-based drivers are diametrically opposed. Our research confirms, as Thelen argues, that initial conditions within a jurisdiction matter.⁴²⁴ BC prioritized compliance with the existing regulatory framework, notably by preventing platforms from operating outside it.⁴²⁵ The narrative of novelty, flexibility, and technology was not enough to disrupt institutions, partly because local actors were organized and united, and alternative transportation options were already well established. The government retained control over the regulatory process, prioritizing fairness for workers over consumer convenience. The state's resolve was decisive. BC kept control of a consensual regulatory process and maintained its goal of promoting greater equity for workers.⁴²⁶

In California, although the initial government actions aimed to recognize employee status for platform workers, they were eventually excluded from this classification.⁴²⁷ With key government actors divided and institutional constraints restricting the government's discourse, the platform firms deployed a strategy of contentious compliance,⁴²⁸ combining narrative power and strategic legal engineering, notably through Proposition 22, to lock the regulatory framework in their favor.

Ultimately, the rise of platform firms tests the resilience of existing labor standards. Legal regulation attempts to meet that challenge, as demonstrated by the European Union's 2024 adoption of a Directive on Platform Work,⁴²⁹ and the International Labour Organization's work on Decent Work in the Platform Economy.⁴³⁰ In this regard, our research shows that time is a

⁴²³ See *supra* Part III.

⁴²⁴ Thelen, *supra* note 103, at 939.

⁴²⁵ See *supra* Part III.A.

⁴²⁶ See *supra* Part III.B.2.

⁴²⁷ See *supra* Part III.B.1.

⁴²⁸ See Valdez, *supra* note 57, at 177 (arguing that firms take advantage of loose regulations through contentious compliance).

⁴²⁹ Council Directive 2024/2831, 2024 O.J. (L). See generally Antonio Aloisi & Valerio De Stefano, 'Gig' Workers in Europe: The New Platform of Rights, SOC. EUR. (Mar. 16, 2024), <https://www.socialeurope.eu/gig-workers-in-europe-the-new-platform-of-rights> (describing the major provisions contained in the European Union's provisional agreement on the text of the Platform Work Directive); Sandra Fredman, Darcy Dutoit, Alessio Bertolini, Jonas Valente & Mark Graham, *Fair Work for Platform Workers: Lessons from the EU Directive and Beyond*, 54 INDUS. L.J. 425, 425 (2025) (examining the EU Platform Work Directive and arguing that its framework offers a basis for wider international regulation, potentially through a future ILO convention).

⁴³⁰ See *supra* note 115 and accompanying text (detailing the ILO's work towards adopting, in 2026, a convention and recommendation on Decent Work in the Platform Economy).

valuable ally of law and its evolution. BC's responses to the arrival of such firms illustrates the importance of acting with deliberation. Eschewing a hasty response enabled the government to understand societal and technological changes and to craft laws that can achieve desired results. Rooted in particular institutional and regulatory history, these laws should help safeguard existing standards and ensure the protection of the most vulnerable workers.