

In the Supreme Court of Nevada

UBER SEXUAL ASSAULT SURVIVORS FOR LEGAL ACCOUNTANTS
and NEVADA JUSTICE ASSOCIATION,
Appellants,

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Elizabeth A. Brown
Clerk of Supreme Court

v.

UBER TECHNOLOGIES, INC., a Delaware corporation; MATT GRIFFIN, JOHN GRIFFIN, SCOTT GILLES, and TIA WHITE, individuals; “NEVADANS FOR FAIR RECOVERY,” a registered Nevada political action committee; and FRANCISCO AGUILAR, in his official capacity as Nevada Secretary of State,
Respondents.

On Appeal from the First Judicial District Court,
Case No. 24-OC-000561B

BRIEF OF AMICI CURIAE NEVADA AFL-CIO, NATIONAL EMPLOYMENT LAW PROJECT, AND POWERSIWTC ACTION IN SUPPORT OF APPELLANTS

MATTHEW L. SHARP
NEVADA STATE BAR NO. 4746
Matthew L. Sharp Ltd.
432 Ridge St.
Reno, NV 89501
(775) 324-1500
Matt@MattSharpLaw.com

DAVID H. SELIGMAN
(pro hac vice forthcoming)
RACHEL W. DEMPSEY
(pro hac vice forthcoming)
Towards Justice
PO Box 371680, PMB 44465
Denver, CO 80237-5680
(720) 248-8426
david@towardsjustice.org
rachel@towardsjustice.org

Counsel for Amici Curiae

NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

The Nevada AFL-CIO is the state federation of labor representing over 150,000 members from more than 120 unions spanning various industries in Nevada.

The National Employment Law Project (NELP) is a non-profit legal organization that advocates for the employment and labor rights.

PowerSwitch Action (formerly the Partnership for Working Families) is a non-profit organization to promote multi-racial feminist concerns.

All entities are represented by the Matthew L. Sharp and Towards Justice.

Dated: July 22, 2024

MATTHEW L. SHARP, LTD.

/s/ Matthew L. Sharp

Matthew L. Sharp

Nevada Bar No. 4746

432 Ridge Street

Reno, NV 89501

(775) 324-1500

Attorneys for Amicus Curiae

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The **Nevada AFL-CIO** is the state federation of labor that representing over 150,000 members from more than 120 unions spanning various industries in Nevada. The federation represents a diverse membership including individuals from all sectors of the economy. The Nevada AFL-CIO's mission is to champion the rights of Nevada's workers, advocating for policies that promote economic fairness, safe working conditions, and the dignity that every worker deserves.

The **National Employment Law Project (NELP)** is a non-profit legal organization with more than 50 years of experience advocating for the employment and labor rights of underpaid and unemployed workers. For decades, NELP has focused on the ways in which various work structures exacerbate income and wealth inequality, the segregation of workers by race and gender into poor quality jobs, and the ability of workers to come together to negotiate with business over wages and working conditions.

PowerSwitch Action (formerly the Partnership for Working Families) is a community of leaders, organizers, and strategists forging multi-racial feminist democracy and economies in our cities and towns. Our network of 20 grassroots affiliates weaves strategic alliances and alignments amongst labor, neighborhood, housing, racial justice, faith, ethnic-based, and environmental organizations. All too often, workers face abuse and exploitation on the job. Those experiences are made

more harmful when employers evade their responsibilities through worker misclassification. Our affiliates witness and confront the direct and daily impact of misclassification, which encompasses not only loss of wages, but also the loss of vital protections of the basic dignity, safety and health of individuals at work.

SUMMARY OF ARGUMENT

This case is about the efforts of Uber Technologies, Inc. (“Uber”) to write the laws in its favor by making massive investments in Nevada’s electoral process and deceiving voters about the likely consequences of its efforts. Through a Nevada-based Political Action Committee called “Nevadans for Fair Recovery,” Uber filed a petition for a proposed initiative, 1-JA-51-52 (the “Proposed Initiative”), which would cap plaintiffs’ attorney’s fees at 20% of the plaintiff’s recovery.

The proposal would benefit Uber because it could effectively insulate it from private claims brought by riders or drivers for, among other things, sexual harassment and assault. But the consequences of the proposal would stretch far beyond Uber. For all the reasons set out in the Appellants’ Brief, the proposal would make it substantially more difficult for injured Nevadans to obtain counsel. That in turn would impose costs on Nevada’s healthcare, public benefits, and civil justice systems. Neither Uber nor its petition discloses any of that to voters. *Amici* submit this brief in support of Appellants to urge the court to reject the Proposed Initiative.

First, Uber’s efforts here are taken from its standard playbook. Across the country, Uber has sought to write its own laws to avoid accountability to drivers, riders, and the public generally. Like in Nevada, these efforts are founded upon misrepresentations. But opponents of Uber’s efforts have been unable to correct the record through the normal electoral process. Uber’s substantial resource advantages

along with its ability to use its app to have frequent and direct communication with drivers and riders have given it powerful political advantages to spout its misrepresentations.

Second, we're already seeing how Uber's efforts in Nevada appear to be founded on similar misrepresentations. Once it could no longer rely on arbitration clauses to avoid claims for sexual assault and harassment, Uber could have decided to change its behavior to minimize liability, or it could have had an honest and open debate on the merits of its proposed policy. Instead, it has sought to limit its exposure through a cynical political effort that, if successful, would impede everyday Nevadans from accessing the civil justice system.

Third, if successful, Uber's efforts to steamroll the Nevada electoral process would have massively harmful consequences for people and communities across Nevada. Uber should not be permitted to engage in a deceptive and misleading campaign to achieve its desired result without any acknowledgement of the harm that it could leave in its wake. For Uber, prevailing here would mean business as usual, but Nevada will be left holding the bag.

ARGUMENT

I. Uber's Tactics in Nevada Are Pulled from Its Standard Playbook

Throughout its history, Uber has invested massive resources in a game of whack-a-mole with the legal rights of working people—as soon as there seems to be a

path to holding Uber accountable, Uber races to shut it down. Uber has paid massive sums to write laws that force consumers, workers, and the public generally to pay for the costs its model imposes on the world. Because few voters would ever permit a major multinational corporation to write itself out of the laws, these efforts have almost always involved deception. The Proposed Initiative is one of Uber’s most brazen and cynical plays.

At its inception, regulators around the world began scrutinizing whether Uber was complying with laws governing transportation companies like taxis or large employers.¹ Uber insisted, however, that it was neither of these things. And to maintain this fiction, it sought to evade regulatory scrutiny, even employing mobster tactics like “kill switches” to destroy evidence before it came into the possession of law enforcement.²

When that strategy started to run out, Uber began rewriting the laws, often through subterfuge and deception.³ For example, it spent hundreds of millions of dollars on ballot measures to codify the fiction that drivers are entirely independent

¹ See Mariah Montgomery et al., [The Bully’s Playbook](#), Powerswitch Action & NELP (Apr. 2024) at 8.

² See Rob Davies & Simon Goodley, [Uber bosses told staff to use ‘kill switch’ during raids to stop police seeing data](#), The Guardian (July 10, 2022).

³ See, e.g., Ben Butler, [The Uber files: firm knew it launched illegally in Australia, then leaned on governments to change the law](#), The Guardian (July 14, 2022) (“It is a tactic the company has used repeatedly in markets around the world: launch first, establish a loyal customer base, and then lobby aggressively for laws to be changed”).

businesses.⁴ Just like in Nevada, where Uber is telling the public that it is supporting the Proposed Initiative to help people, Uber told the public that it was trying to help drivers and riders by pushing these ballot measures. The company argued that these measures would be the only way for drivers to maintain their purported flexibility and independence, and as part of these efforts also purported to provide drivers with bare-minimum benefits, like minimum compensation.⁵

Uber's strategy was built on lies. In reality, while claiming to support drivers' independence, Uber sought to exercise ever-increasing control over them through hidden algorithms to make sure drivers worked when, how, and where Uber wanted.⁶ Uber also failed to disclose to drivers and the public that its so-called minimum pay standards often substantially understated drivers' earnings because the hourly wage guarantees failed to take account of drivers' expenses and did not count many of the hours drivers spent working for Uber.⁷ Finally, Uber obscured from public view the

⁴ See Montgomery et al., *supra* at 5 (“Uber and Lyft deploy an overwhelming number of well-connected lobbyists to push elected officials and their staff to drive statewide preemption policies banning local communities from passing regulatory legislation....[They] have [also] found myriad other ways to exercise economic power and buy policies they want. Uber and Lyft, along with delivery app corporations DoorDash, Instacart, and Postmates, spent \$220 million in California to pass Prop 22. Over two election cycles, they have spent nearly \$25 million in Massachusetts—so far—in an ongoing fight for a similar ballot measure there.”).

⁵ See *id.* at 24-26.

⁶ See, e.g., Alex Rosenblat & Luke Stark, [*Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers*](#), 10 Int'l J. of Commc'n, 3758 (2016).

⁷ See Montgomery et al., *supra* at 25-26.

fact that, through its efforts to distance itself from its drivers, the company has also sought to insulate itself from liability for injuries caused while drivers performed work in service of the company's profits. *See Koussa v. Att'y Gen.*, 188 N.E.3d 510, 517 (Mass. 2022).

Opponents of these measures never stood a chance of correcting the record through the electoral process. First, Uber has demonstrated a willingness to spend massive sums to protect a business model that denies responsibility to drivers, riders, or the public. In support of the effort to pass Proposition 22 in California, Uber, Lyft, and other gig companies spent around \$200 million, making it “the most expensive such campaign ever.”⁸ Some noted that “[a]ny Californian with eyes, ears, a cell phone number, or a working television likely heard from those pushing Prop 22.”⁹ The proponents of Proposition 22 outspent opposition by ten to one.¹⁰

Uber invested its money in misrepresentations and intimidation. In California, voters were bombarded with purported empirical studies describing the purported harmful consequences of Proposition 22 failing. In most cases, these studies were

⁸ Michael Hiltzik, [*Uber and Lyft just made their campaign to keep exploiting workers the costliest in history*](#), L.A. Times (Sept. 8, 2020).

⁹ Aarian Marshall, [*With \\$200 Million, Uber and Lyft Write Their Own Labor Law*](#), WIRED (Nov. 4, 2020).

¹⁰ Faiz Siddiqui & Nitasha Tiku, [*Uber and Lyft used sneaky tactics to avoid making drivers employees in California, voters say. Now, they're going national*](#), Washington Post (Nov. 17, 2020).

themselves financed by Uber and industry partners.¹¹ Uber and partners also hired public relations firms to investigate and spread rumors about labor activists.¹²

Uber’s platform to peddle these lies came not just from its money, but also from its technology. In the weeks leading up to the Proposition 22 vote, Uber used its app “to bombard riders and drivers with messages urging them to vote for Prop 22.”¹³ It served riders with threatening pop-up ads that they had to review before ordering a ride, and it told drivers that they would lose their livelihoods if Californians like them didn’t support the measure.¹⁴ To request a ride “users had to tap the ‘confirm’ button” on one of these messages.¹⁵ None of the drivers and riders who gave the company their private information to sign up for the app had agreed to allow Uber to bombard them with political messaging. But that’s precisely what Uber did.

¹¹ See Dara Kerr, [Uber and Lyft paid \\$400K to firm conducting ‘independent studies’ on Proposition 22](#), CNET (Oct. 31, 2020); see also Harry Davies et al., [Uber broke laws, duped police and secretly lobbied governments, leak reveals](#), The Guardian (July 11, 2022) (“[I]n a bid to shape policy debates, [Uber] paid prominent academics hundreds of thousands of dollars to produce research that supported the company’s claims about the benefits of its economic model.”).

¹² Dara Kerr, [‘A Totally Different Ballgame’: Inside Uber and Lyft’s Fight Over Gig Worker Status](#), CNET (Aug. 28, 2020).

¹³ Andrew J. Hawkins, [Uber and Lyft had an edge in the Prop 22 fight: their apps](#), The Verge (Nov. 4, 2020).

¹⁴ See Suhauna Hussain, [Uber, Lyft push Prop. 22 message where you can’t escape it: your phone](#), L.A. Times (Oct. 8, 2020) (“Last week the ride-hailing app served users with a pop-up threatening that if voters failed to pass Proposition 22 on the Nov. 3 ballot, wait times and prices would ratchet up, and drivers would lose their livelihoods.”).

¹⁵ Hawkins, *supra*.

Uber’s unprecedented efforts had the desired effect. Proposition 22 passed, and subsequent reporting revealed that Uber’s deception was central to its electoral success. Despite the fact that Proposition 22 stripped Uber’s drivers of traditional employment protections and benefits,¹⁶ one survey found that 40% of California voters who supported the measure said they did so in order to allow gig-economy workers to earn a living wage.¹⁷ One California voter who supported Proposition 22 because she thought it would “help the drivers” and result in companies like Uber “paying them more,” said that she felt “deceived” by the campaign led by companies like Uber, which, in her words, were actually “just trying to save their own pockets.”¹⁸

II. Uber Is Bringing Its Playbook to Nevada

Now that Uber has proven in California that it can win a popular referendum through an avalanche of money and deceit, it has turned its attention to Nevada—employing similar tactics to confuse voters while doing everything it can to protect its bottom line. As of now, Uber has only spent around \$5 million in support of the Proposed Initiative,¹⁹ but more is surely on the way. At any moment, Uber could also exploit its technology and its drivers’ and customers’ private information to bombard

¹⁶ See Sara Ashley O’Brien, [*Prop 22 passes in California, exempting Uber and Lyft from classifying drivers as employees*](#), CNN (Nov. 4, 2020).

¹⁷ John Howard, [*An early-voting survey of the ballot propositions*](#), Capitol Weekly (Oct. 28, 2020).

¹⁸ Siddiqui and Tiku, *supra*.

¹⁹ See Nevadans for Fair Recovery, [*Contributions and Expenses Report*](#), NV Sec. of State.

them with political messaging. Just like in California, everyday Nevadans would stand little chance of countering the company's lies through the political process.

Only fifteen years ago, Uber's business model would have sounded unthinkable: Get into an unmarked car with a perfect stranger, and if you're a driver, take them to their destination, or if you're a rider, trust that they will get you where you need to go.

On its face, the model raises serious questions and concerns about how Uber will protect the rights and safety of its drivers and customers. And for some drivers and customers, those concerns are particularly acute. People of color who drive for Uber are significantly more likely to face violence from riders than their white counterparts.²⁰ Similarly, women—whether driving or riding with Uber—are much more likely to experience sexual violence and harassment.²¹ Understanding this, Uber has spent significant resources reassuring women that Ubers are a safe space for them, posting advertisements that Uber is “Driving women’s safety forward” and promising that “At Uber, Safety Never Stops.” London Decl. ¶¶ 12-13.

²⁰ See Strategic Organizing Center, [*Driving Danger: How Uber and Lyft create a safety crisis for their drivers*](#), at 3.

²¹ See CDC, [*The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*](#) (2022) at 5 (finding women experience unwanted sexual contact at more than twice the rate of men); see also Ellen Huet, [*Why Aren't There More Female Uber And Lyft Drivers?*](#) Forbes (Apr. 9, 2015).

This is a sham. Behind the scenes, Uber shirked responsibility for the safety of drivers and customers.²² “In Nevada, Uber leveraged its popularity to exempt itself from background-check requirements, among other safety measures, imposed on taxi services.” London Decl. at ¶ 20. It further insulated itself through arbitration requirements in its fine-print terms that ensured any claims brought by drivers or passengers against Uber were kept secret and out of court.²³

At least with respect to sexual assault and harassment, Uber couldn’t sustain this strategy. In 2018, in response to public pressure, the company said it would cease “requir[ing] arbitration for individual claims of sexual assault and harassment.”²⁴ Then, in 2022, President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), 9 U.S.C. § 401, *et seq.*, making secret arbitration of sexual assault and harassment claims unlawful.

At this point—forced for one of the first times to confront in court the threat of internalizing some of the costs of the harm its model imposes on drivers and riders—Uber could have chosen either of two legitimate options: It could reduce the risk of

²² See, e.g., Pauline M. Taurife, *Female-Only Platforms in the Ride-Sharing Economy: Discriminatory or Necessary?* 70 Rutgers Univ. L. Rev. 295, 305-06 (2017); see also Dara Kerr, *How risky is your Uber ride? Maybe more than you think*, CNET (Oct. 8, 2014).

²³ See Daisuke Wakabayashi, [Uber Eliminates Forced Arbitration for Sexual Misconduct Claims](#), N.Y. Times (May 15, 2018).

²⁴ Tony West, [Turning the lights on](#), Uber Newsroom (May 15, 2018).

harm by changing its behavior. Or it could try and change the law the old-fashioned way, through open and honest debate about its model.

In Nevada, with the Proposed Initiative, Uber has chosen a third path. It has apparently decided that it won't alter its model to acknowledge responsibility for and accountability to its drivers and riders. And it has also decided that it cannot have an honest debate about the merits of its proposed policy. Uber cannot come out and say it wants to limit its liability by making it too expensive for everyday victims to afford legal representation to pursue their claims, even while it pays its own lawyers millions of dollars in defense of its model.

Instead, Uber has spent millions in support of an initiative that allows it to circumvent the legislative process and lie to voters.²⁵ Uber says that the purpose of the Proposed Initiative is to protect plaintiffs, victims, and consumers.²⁶ But for Uber, the Proposed Initiative isn't about protecting anyone but itself. As demonstrated by the substantial evidence submitted by Appellants, the real consequences of the Proposed Initiative, undisclosed to the public, will be to strip drivers and riders of access to our justice system to hold Uber accountable. This deceptive effort to circumvent the legal process and commandeer the voting public through deceit should not be permitted in our democracy.

²⁵ See Nevadans for Fair Recovery, [Contributions and Expenses Report](#), NV Sec. of State.

²⁶ See Nevadans for Fair Recovery, [Fact Sheet](#).

III. Uber's Proposed Initiative Would Erode the Integrity of Nevada's Legal System to the Benefit of Out-of-State Corporations and to the Detriment of Working People

Uber is the sole contributor to the Political Action Committee pushing the Proposed Initiative. As of July 15, 2024, it had contributed \$5 million to the effort.²⁷ In pushing for the Proposed Initiative, Uber clearly cares about its own legal exposure and its own profits, but it has no concern for the integrity of Nevada's legal system or the ability of millions of Nevadans to pursue justice through the courts.

For these interests, the proposed initiative would be a disaster. Most working people don't have the money to pay an attorney out of pocket. They rely on contingent fee agreements to obtain decent legal representation and hold wrongdoers accountable. Kritzer Decl. ¶¶ 38-45. By capping contingency fees at 20 percent, the proposed initiative would make it impossible for many Nevadans to find lawyers. *Id.* Contrary to Uber's assertions, that doesn't mean more money in the pockets of Nevadans. It means more money in the pockets of their tortfeasors.

This would make it impossible for most victims of sexual assault and harassment to pursue claims through civil litigation, including against Uber. But the cascading consequences of Uber's initiative would cause harm in a variety of additional contexts. Victims of wage theft, deceptive business practices, discrimination, unfair

²⁷ See Nevadans for Fair Recovery, [Contributions and Expenses Report](#), NV Sec. of State.

and abusive debt collection, nursing home abuse, and predatory lending would all have a more difficult time finding counsel. *Id.* ¶¶ 32, 45. And Nevadans would be more likely to be carved out of class or collective actions because attorneys in Nevada and elsewhere would have a more difficult time justifying reasonable fee awards for recoveries to Nevada-based class members.²⁸ All this would cause real harm to working people in Nevada, and just as concerning, it would make Nevadans a target for abuse by those engaging in illegal conduct whose violations would be more likely to go unprosecuted through the civil justice system. Uber doesn't disclose any of this to voters.

Before the Court today is an initiative proposed and supported by a San Francisco-based multinational corporation. If the Proposed Initiative becomes law, Uber won't have to live with the consequences of a massive shift in Nevada's civil justice system—it will be able to maintain business as usual. But millions of ordinary people in Nevada, Nevada's healthcare system, Nevada's public benefits system, and Nevada's courts, including this Court, will be left holding the bag. It is imperative that this Court hold Uber to the same standard it would hold any special interest pushing

²⁸ *See, e.g., Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (Posner, *J.*), as amended on denial of reh'g (May 22, 1992) (“The object in awarding a reasonable attorney's fee, as we have been at pains to stress, is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible.”).

a policy change through the initiative process. Because the petition for the Proposed Initiative, is “deceptive” and “misleading,” *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022), it should be rejected.

CONCLUSION

The district court’s judgment should be reversed.

Dated this 22nd day of July 2024

/s/ Matthew L. Sharp

Matthew L. Sharp

LAW OFFICE OF MATTHEW L. SHARP

432 Ridge St.

Reno, NV 89501

Ph: 775-324-1500

Matt@MattSharpLaw.com

David H. Seligman (*pro hac vice
forthcoming*)

Rachel W. Dempsey (*pro hac vice
forthcoming*)

TOWARDS JUSTICE

PO Box 371680, PMB 44465

Denver, CO 80237-5680

Ph: (720) 441-2236

david@towardsjustice.org

rachel@towardsjustice.org

*Counsel for Amici Curiae Nevada
AFL-CIO, National Employment
Law Project, and PowerSwitch Action*

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Baskerville font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 3198 words.

3. Finally, I hereby certify that I have read this amicus brief, and to the best of my knowledge, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume

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number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that if it does not, I may be subject to sanctions.

Dated: July 22, 2024

MATTHEW L. SHARP, LTD.

/s/ Matthew L. Sharp

Matthew L. Sharp

Nevada Bar No. 4746

432 Ridge Street

Reno, NV 89501

(775) 324-1500

Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

Pursuant to NRAP 31, I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and on this date, I electronically filed and served a true and correct copy of the foregoing BRIEF FOR OF AMICO CURIAE OF THE NEVADA AFL-CIO, NATIONAL EMPLOYMENT LAW PROJECT, AND POWERSWITCH ACTION as follows:

 X via eFlex Program, which will send a notice of electronic filing and service to Court's Service list for the above referenced case.

DATED this 22nd day of July 2024.

 /s/ *Cristin B. Sharp*
An employee of Matthew L. Sharp, Ltd