

Written Testimony of Karen Anderson

For: “Independent Contractor Hearing” conducted by
House Committee on Education and the Workforce Subcommittee on
Workforce Protections
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My name is Karen Anderson and I am the founder of Freelancers Against AB5, an ad-hoc, bipartisan, grassroots, all-volunteer group with almost 18,500 members. I am a third-generation native Southern Californian, and have been a freelance writer, managing editor and photographer for more than 25 years.

When I read in the news on September 18, 2019 that AB5 with its strict ABC test was signed into law, I knew immediately it was an existential threat to my career. Shortly thereafter, I launched a public Facebook group called Freelancers Against AB5 so that I could connect with professionals outside of my own sector to find out how AB5 was affecting everyone in general—be it golf caddies, nurse practitioners, graphic designers, videographers, theater groups, and others who might see my page and want to share their stories.

Little did I know that I would soon have a front-row seat to hundreds and hundreds of negative stories pouring into my group from across all demographics, income levels, political affiliations, and the vast swath of professions, trades, non-profits and sectors. I heard from hundreds of individuals who had already lost their careers overnight in November and December 2019 even before AB5 went into effect on

January 1, 2020—let go by their clients who were no longer able to legally contract with them.

I received stories about children's theaters closing; local bar bands ceasing to perform; professional Santas being laid off; writers being let go from publications; and court reporters suddenly without assignments, to name a few. There was even a Grammy Award-winning mariachi band that had to shut down due to AB5 long before the Covid lockdowns took place.

The ripple effects of AB5 have spread to the most marginalized. Speech language pathologists in my group told me they had to abandon their elderly patients whom they were teaching to learn how to swallow after recovering from a stroke. Sign-language interpreters told me they could not provide ADA-mandated services to the deaf-and-hard-of hearing. Non-profit youth sports clubs described how they had to close their doors due to AB5. Interpreters told me the availability of language services in hospitals and public settings was being compromised.

The array of professions in my group adversely affected in some way by AB5 includes musicians, translators, interpreters, small non-profit arts groups, community theaters, independent healthcare professionals, indie filmmakers, holiday performers, Christmas carolers, real estate appraisers, rehab specialists, sign-language interpreters, videographers, photographers, wedding planners, florists, event planners, opera singers, wellness professionals, auctioneers, funeral officiants, massage therapists, forensic nurses, paralegals, court reporters, pharmacists, architectural designers, animal shelter consultants, music therapists, cancer registrars, youth coaches,

comedians, after-school programs, dance companies, lighting directors, magicians, makeup artists, tutors, guitar makers, virtual assistants, creative consultants, realtime captioners, churches, lactation consultants, fly-fishing guides and many, many more.

All told, within my group, we've identified more than 600 categories of professions impacted in some way by AB5 and its onerous ABC test, the same ABC test that USDOL praises in its proposed FLSA rule and attempts to mimic in regards to the restrictive B prong.

I have knowledge of each and every one of these AB5 stories coming into my group, and I have conversed personally with hundreds of individuals affected adversely by the ABC test, including many small-business owners and solopreneurs who have been audited by California's Employment Development Department for alleged misclassification violations. To this day, despite the so-called exemptions for certain professions added in September 2020 via the cleanup bill AB2257, the law continues to wreak havoc on legitimate independent contractors and small-business owners. As it turns out, many of the exemptions come with caveats and fine print that make some exemptions nearly impossible to take advantage of. The convoluted language in the law also creates a chilling effect in which businesses don't want to utilize independent contractors from California at all, even if there is a pathway to an exemption—because there are so many potential landmines.

Authored by an assemblywoman in the state legislature who now leads California Labor Federation, AB5 represents a scorched-earth approach to policymaking, which in turn led to a "sausage-making-after-

the fact" scenario that has created chaos, confusion, division, and favoritism that members of my group have also been subjected to, as well as a steady stream of shuttered careers that continues to this day. Those with the loudest voices or with enough funding to hire a lobbyist were given first consideration, while hundreds of categories of professions are still left out in the cold, many having fallen through the cracks. One such casualty is the freelance transcription profession, which is all but extinct in California due to AB5. This has impacted seniors and women who primarily dominate that field. I wrote about AB5's devastation to the freelance transcription profession in an article published last year by the Independent Women's Forum.

Recently, on March 17, 2023, the 9th Circuit Court validated what those in my group have experienced first hand about the arbitrary exemption process. The 9th Circuit decision is in response to an older lawsuit from 2019 filed against the state of California by Uber and Postmates (*Olson v. state of California*), which had been dismissed outright by a lower court judge in February 2020. The oral arguments for the appeal took place on July 13, 2022. In its decision, the three-judge panel rebuked the author of AB5 (former assemblywoman Lorena Gonzalez) for engaging in "backroom dealing." The court stated that during oral arguments, counsel for the state was "unable to articulate any conceivable rationale for the exemptions of AB5 as amended." The court also stated that there is "no rhyme or reason" for the exemptions, and that it is plausible that AB5 violates the equal protection clause under the 14th amendment, as alleged by the Plaintiffs. The court cited Lorena Gonzalez 14 times by name and rebuked her for her blatant

“animus not based in reason” against the plaintiff. The court stated that the exemptions were the product of “backroom dealing” and “lobbying,” and that the bill borders on “corruption, pure spite and naked favoritism.”

Meanwhile, my focus has always been to highlight the stories of devastation from members of my group, and to raise awareness about the law’s effects on the hundreds of professions not related to the rideshare industry. Because Uber and Lyft receive a majority of the headlines and attention in the media, the public is under the impression that AB5 only applies to rideshare/delivery, or more recently, the trucking industry.

I have been doing this work in my spare time, for free for almost three years. I am in no way affiliated with the rideshare industry, nor have I ever even once had a conversation with leaders in that industry. I have been accused many times by Lorena Gonzalez and by law professor Veena Dubal of being funded by Uber and Lyft. This is categorically false.

As a new fellow with the Independent Women’s Forum, I would like to acknowledge IWF for its support in highlighting many of our AB5 stories on its website, and for helping me get op-eds published in several news outlets to our AB5 stories.

Before closing, I’d like to add some additional AB5 stories that I shared with the California Advisory Committee for the U.S Commission on Civil Rights in March 2022 during a series of public panel discussions in 2022 about the civil rights implications of AB5:

ADDITIONAL AB5 STORIES:

A forensic nurse in my group says AB5 is detrimental to rape victims. Many forensic nurses work as independent contractors for hospitals, providing sexual assault forensic medical evidentiary examinations. Without forensic nurses, patients who have been sexually assaulted can suffer long wait times on the worst night of their lives and may receive substandard exams if provided by untrained medical personnel in an emergency department.

Elizabeth Adger had to flee the state with her autistic son and her very ill husband who had stage-four colon cancer when she lost her freelance bookkeeping career overnight that solely supported her family.

Independent filmmaker Margarita Reyes faces restrictions with hosting youth-mentoring programs in marginalized communities.

Credentialed teacher Dena has a chronic disease but can't contract for online tutoring because she lives in California.

Nancy Hall is a licensed pharmacist in her 60s with a doctorate degree. Her longtime freelance career of performing compliance inspections of pharmacies was destroyed overnight by AB5.

JN Knotts is an audio-visual tech. She made \$40 an hour as an independent contractor. Now she can only work as an on-call employee. She doesn't qualify for benefits, and makes 1/3 less BEFORE taxes. When on multi-day assignments, she sometimes has to sleep in her car to save money on gas and parking that she can't deduct.

Gail Gordon founded her nonprofit opera company in honor of her mother who was a holocaust survivor. Her company presented music by Jewish composers suppressed by the Nazis. She had to shutter her opera, and now this historic music has been silenced.

Laurie Blunk is an RN and a nurse educator. She is legally disabled with 35 benign bone tumors on her body. She lost her career to AB5 because nurse educators are not exempt.

Monica Fontes is a senior, a translator and a cancer patient. She says, quote: "AB5 destroyed my life. This work was my salvation from depression during chemotherapy. Who will hire a sick senior like me?"

Judith Flex Helle shared with our group that AB5 has killed the concert dance scene in Los Angeles. She says there is no possible way that small but culturally diverse dance companies, most run by women and minorities, can financially comply with this law. After Covid, AB5 is the final death knell.

****But AB5 isn't just about independent contractors. With AB5, the enormous fines and penalties for misclassifying an independent contractor can put a small business out of business. The Employment Development Department targets businesses of any size. In our group, I've heard personally from dozens of mom-and-pops and one-person businesses, mostly single women, who have been audited for contracting with independent contractors, whether for a day, or on occasion for a few months. I've heard from a florist, a cookie baker, a bridal-veil maker, music-store owners, wedding photographers, spa owners, wedding planners, and an architectural designer. I also heard from Baha Malek, a single woman of color who owned a platform that connected independent contractor referees and umpires with local schools and sports leagues. The lawyer fees alone put her out of business before referees and umpires received a last-minute exemption in the AB2257 cleanup bill in September 2020, but it was too late for Baha Melek and her business.

On behalf of independent professionals in California, I ask that the cautionary tale of AB5 and its ABC test be a warning to the nation so that these types of destructive policies don't spread nationwide. Thank you to the committee for the opportunity to share my testimony about AB5.

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