Written Testimony of Kim Kavin
For the hearing titled "Empowering the Modern Worker"
Committee on Education & Workforce Subcommittee on Workforce Protections
U.S. House of Representatives
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Thank you, Chairman Mackenzie and Ranking Member Omar, for this chance to testify about what we've learned since I was here two years ago.

I'm a co-founder of the grassroots coalition Fight For Freelancers. Several of us freelance writers created the group in 2019 after California passed a law called Assembly Bill 5. That deeply misguided law kicked off a wave of freelance busting that targeted our home state of New Jersey next, and ever since then, the whole country.

Today, independent contractors in all kinds of professions are raising our voices because this kind of policy-making directly targets our livelihoods. Our opponents keep saying it will protect workers by stopping misclassification, but the evidence shows the main effect is hurting independent contractors.

Freelance busting now threatens the incomes and careers of tens of millions of Americans by way of the federal PRO Act, U.S. Labor Department rule-making and, right now in New Jersey, proposed rule-making that a top labor attorney warns will eliminate every single independent contractor in the state.[1]

This is not reasonable policy-making. And at this point, it's clear that these harms are very much intentional.

Attorney review of what's happening in New Jersey includes words like "eviscerate."[2] Lawyers say these interpretations "far exceed" general norms.[3] In California, a state Assemblyman has

[1] "Garden State May Soon Become Even Less Hospitable to Independent Contractors Than the Golden State," Richard Reibstein, Troutman Pepper Locke, May 1, 2025
[2] Ibid.
[3] "NJ DOL Issues Proposed Rules on ABC Test for Independent Contractors," Kelly L. McNaughton and Adam Busler, Fox Rothschild, May 1, 2025

called for the U.S. Department of Justice to investigate "discrimination" in this policy-making.[4] Members of the California Advisory Committee to the U.S. Commission on Civil Rights issued a report describing this as a "seismic change" in policy with a "decidedly negative impact" on women, immigrants, people of color and other politically disadvantaged groups.[5]

Policy-makers keep saying legitimate independent contractors will be just fine if we change the rules to stop the misclassification of employees. In California, Governor Gavin Newsom said the law would help create pathways for more people to form a union.[6] The California Labor Federation said that: "Bringing misclassified workers into employee status will mean more workers have a safety net when they are sick, laid off, or hurt at work."[7]

The promise was a whole bunch of new jobs and union members. Reality is the opposite.

California's job-creation pace tanked. Just last month, the *Orange County Register* compared the five years prior to the law with the five years after the law. It found an 81% decline in the pace of job creation.[8] As for forming unions, federal data shows that union membership as a percentage of employment in California actually went down.[9]

And independent contractors got hurt. Research by economist Liya Palagashvili, who is also testifying today, showed that on average for affected professions, not only did self-employment take a 10.5% hit in California, but overall employment dropped too.[10] She then researched multiple states and found that these kinds of restrictions cause significant declines in traditional W-2 employment, self-employment and overall employment.[11]

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[4] "Assembly member Tri Ta calls for federal investigation to alleviate discriminatory practices," *The Event News Enterprise*, March 13, 2025
[5] "The Impact of California's AB5 on Marginalized Communities: Examining the Evidence and Recommendation for Further Study," members of the California Advisory Committee to the U.S. Civil Rights Commission, December 2024
[6] Office of Governor Gavin Newsom, Assembly Bill 5 signing statement, September 18, 2019
[7] "Disrupt Inequality, Defend Dynamex, Yes on AB 5," California Labor Federation, AFL-CIO, available at: https://calaborfed.org/wp-content/uploads/2019/02/Factsheet-AB-5-Dynamex-LOBBY-DAY.final_-1.pdf
[8] "California job creation dropped 81% after pandemic," Jonathan Lansner, *Orange County Register*, April 3, 2025
[9] "Union Members in California—2024," U.S. Bureau of Labor Statistics, February 27, 2025
[10] "Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5," Liya Palagashvili, Paola Suarez, Christopher M. Kaiser and Vitor Melo, January 31, 2024
[11] "New Study: From Gig to Gone? ABC Tests and the Case of the Missing Workers," Labor Market Matters, January 10, 2025. "The ABC test reduced traditional (W-2) employment by 4.73%. Self-employment fell by 6.43%. Overall employment fell by 4.79%."

I'm no expert economist, but I know what it looks like when you hurt people. And it's happening again now with the rule New Jersey just proposed. That rule actually states that these restrictions on independent contracting will not create a single job.[12] That's not protecting me. It's taking away my 22-year freelance career and leaving me with nothing.

In all these years, I have never heard a single advocate for independent contractors say it's OK for a company to misclassify an employee. Everyone agrees that's wrong. But it's also wrong to force legitimate independent contractors out of business. This has been a masterclass in how to demolish people's chosen livelihoods.

We are asking Congress to protect our fundamental freedom to earn a living. Federal data shows the vast majority of independent contractors prefer this way of achieving the American dream. Data from as long as a decade ago[13] shows that this goes beyond 80/20. It's a 90/10 commonsense issue.[14]

Please, pass the Modern Worker Empowerment Act and add preemption of state independent contractor laws. Stop these attacks on our freedom to earn a living, once and for all.

WHO DOES FREELANCE BUSTING HURT?

Freelance busting hurts non-English-speaking people who are sick or injured. They rely on independent certified medical interpreters like Ana Sikavica in New Jersey. She speaks Croatian, Serbian, Bosnian and Montenegrin—not exactly the kinds of languages most medical facilities can afford to have on staff in a full-time, traditional job.[15]

Freelance busting hurts rape victims. In California, some forensic nurses provide sexual-assault medical evidentiary exams for medical facilities that can't have a forensic nurse on duty 24/7. Without this, victims' exams to help prosecute their rapists can be delayed.[16]

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[12] Proposed New Rules: N.J.A.C. 12:11, N.J. Department of Labor and Workforce Development, Office of the Commissioner, "ABC Test, Independent Contractors," April 28, 2025

[13] U.S. Government Accountability Office, letter to U.S. Senators Patty Murray and Kirsten Gillibrand, "Contingent Workforce: Size, Characteristics, Earnings, and Benefits," April 20, 2015

[14] "Contingent and Alternative Employment Arrangements," U.S. Bureau of Labor Statistics, November 8, 2024. "As in prior surveys, independent contractors overwhelmingly preferred their work arrangement (80.3 percent), whereas 8.3 percent would prefer a traditional work arrangement. The remainder expressed no clear preference."

[15] Ana Sikavica and Lyubov Gerasimova are examples from The Language Center in East Brunswick, N.J.

[16] This and other California examples are from the Freelancers Against AB5 compilation of personal stories

Freelance busting hurts people who are experiencing a psychological crisis. In California, a healthcare professional had to let patients go after she could no longer be an independent contractor during evening time slots at a clinic for mental health and suicide prevention.

Freelance busting hurts deaf and hard-of-hearing people. Sarah Munro says she could no longer work as a freelance sign-language interpreter in California to help people access educational, healthcare and other services.

Freelance busting hurts military spouses. As Marisa Palmieri Shugrue wrote in Ohio, a quarter of military spouses are or have been self-employed.[17]

Freelance busting hurts Ukrainian refugees, like the ones in New Jersey who turn to Lyubov Gerasimova for help in our legal system. She speaks to them in Ukrainian, Polish and Russian.

Freelance busting hurts the children of owner-operator truckers like Michael Bell who drop off the kids at school, do a run at the Port of NY&NJ, and then pick the kids up.[18]

Freelance busting kills dogs and cats because consultants like Valerie Talcott Fausone can no longer work with large rescues and small shelters in California to improve death-row results.

Freelance busting hurts music lovers. As bandleader Bradley Madsen of East Orange, N.J. wrote, live music will all but stop if independent musicians aren't allowed to play together in various combinations across multiple venues.[19]

Freelance busting hurts young athletes, per Chris James in California. Many youth sports clubs are nonprofits. Coaches and referees tend to be volunteers or independent contractors.

Freelance busting hurts people trying to find well-written information outside the social-media swirl. Two-thirds of writers and authors in the United States are self-employed.[20]

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available at: https://rolls.bublup.com/Anderson/AB5-Personal-Stories

[17] "Freelancers, including military spouses, will lose if PRO Act passes with 'ABC test,'" Marisa Palmieri Shugrue, Cleveland.com, April 2, 2021

[18] This example is from BBT Logistics in Newark, N.J.

[19] "Live music will all but stop if independent contractor bill passes," Bradley Madsen, *Asbury Park Press*, March 6, 2020

[20] U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, "Writers and Authors," retrieved May 9, 2025

THE 10% TO 30% (AND NEW JERSEY'S 40%) CLAIM

As a matter of routine, freelance busters claim that 10% to 30% of independent contractors in the United States today are misclassified.[21] [22] [23] Congress should question this claim.

The 10% to 30% range is often attributed to 2020[24] analysis by the National Employment Law Project (NELP). This analysis is built in part on information that is shockingly old, devoid of independent contractor voices, and not representative of modern work:

- NELP's 2020 analysis cites a February 2000 analysis[25] known as the "Planmatics study" that was researched in the 1990s.
- Authors of the "Planmatics study" did not interview independent contractors. They did include viewpoints of the AFL-CIO and Economic Policy Institute, which claimed "the typical career paradigm is characterized by lifetime employment with a single employer, steady advances up the job ladder, and a pension upon retirement."
- That is not the typical career paradigm today. The U.S. Bureau of Labor Statistics, in 2023, cited people having an average of 12.7 jobs over their working lifetime.[26]
- In terms of how independent-contractor status is determined, the Planmatics study states: "The three requirements under the ABC test are the same for all states." That is also demonstrably false today.[27] Some states are now editing or interpreting this three-prong test to determine independent contractor status in ways that make it all but impossible for many independent contractors to pass without exemptions. Top attorneys noted that in California, Assembly Bill 5 used approximately 130 words to describe the ABC Test, and approximately 3,478 words to describe the exceptions.[28] In New Jersey, a top labor attorney wrote that: "The proposed regulation pertaining to

[21] "'Gig Economy' Corporations Shouldn't Get a Free Pass To Exploit Workers," Rebecca Dixon of the National Employment Law Project, *Newsweek*, March 20, 2024
[22] "2016 Fact Sheet," "Misclassification of Employees as Independent Contractors," Department of Professional Employees, AFL-CIO
[23] "The economic costs of worker misclassification," Economic Policy Institute, January 25, 2023
[24] "Public Task Forces Take on Employee Misclassification: Best Practices," National Employment Law Project, August 2020
[25] "Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs," Planmatics, Inc. for the U.S. Department of Labor, February 2000
[26] "Number of Jobs, Labor Market Experience, Marital Status, and Health for Those Born 1957-1964," U.S. Bureau of Labor Statistics, August 22, 2023
[27] "Understanding Worker Classification: The ABC Test, Misclassification, and Tips for Professionalizing Your Language Services Business," American Translators Association, September 20, 2023
[28] "Independent Contractor Issues in California: Summer 2020 Update," Bruce Sarchet, Jim Paretti and Michael Lotito, Littler, September 1, 2020

> Prong A departs in a dramatic manner from virtually every other test for IC status under federal law and the laws in every state — and unless clarified in the final version of the regulation, would not merely tilt the balance in favor of employee status and against legitimate ICs but rather lead to the elimination of all ICs in New Jersey."[29]

Another frequent citation for this 10% to 30% range is a 2009 report from the U.S. Government Accountability Office—that is based on research as old as 1984.[30] The first words of that 2009 GAO report actually state: "The national extent of employee misclassification is unknown."

Here is the first paragraph of that 2009 GAO report in its entirety:

> "The national extent of employee misclassification is unknown; however, earlier and more recent, though not as comprehensive, studies suggest that it could be a significant problem with adverse consequences. For example, for tax year 1984, IRS estimated that U.S. employers misclassified a total of 3.4 million employees, resulting in an estimated revenue loss of $1.6 billion (in 1984 dollars). DOL commissioned a study in 2000 that found that 10 percent to 30 percent of firms audited in 9 states misclassified at least some employees."

In that last sentence of the 2009 GAO report, please note the use of the 10% to 30% figure from the 2000 "Planmatics study" that is based on outdated 1990s research.

Similarly, in my home state of New Jersey, Congress should be aware of the "Report of Governor Murphy's Task Force on Misclassification" issued in July 2019. This report led to a package of six new laws that the state called "sweeping" in 2020.[31] This 2019 New Jersey report cited research from NELP and misrepresented data from *Harvard Business Review*. The first two sentences of the New Jersey report state:

> "Misclassification is the practice of illegally and improperly classifying workers as

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[29] "Garden State May Soon Become Even Less Hospitable to Independent Contractors Than the Golden State ," Richard Reibstein, Troutman Pepper Locke, May 1, 2025

[30] "Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention," U.S. Government Accountability Office, GAO-09-717, August 2009

[31] "Governor Murphy Signs Sweeping Legislative Package to Combat Worker Misclassification and Exploitation," New Jersey Department of Labor & Workforce Development, January 20, 2020

> independent contractors, rather than employees. This practice has increased by approximately 40% in the last ten years, and is a growing problem in New Jersey (and other states)."

The footnote for that 40% figure in the New Jersey report cites a *Harvard Business Review*[32] article whose author actually wrote this:

> "The use of independent contracting has grown dramatically over the past decade, with one estimate suggesting it has increased by almost 40%, going from 6.9% of employment in 2005 to 9.6% in 2015. According to a 2009 report issued by the United States Government Accountability Office, a significant portion of independent contracting doesn't pass the smell test and in fact represents misclassification of workers. …"

There is a Grand Canyon-size chasm of difference between the statement that *independent contracting* has grown by almost 40%—in a nation where two-thirds of Americans say they would prefer to be their own boss[33]—and the assertion that *misclassification* of employees has increased by approximately 40%.

And, yet again, please note the reference to the 2009 GAO report that is in fact based on research as old as 1984.

Congress should also be aware of what appears to be circular report-writing, in which federal analysis is used as the basis for state analysis that becomes the basis for "new" federal analysis. This happened with NELP's October 2020 policy brief titled "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries":

- Governor Murphy's 2019 report on misclassification in New Jersey cites NELP research as the basis for its some of its claims.
- The 2020 NELP policy brief cites Governor Murphy's 2019 report as the basis for some of its claims.

[32] "Lots of Employees Get Misclassified as Contractors. Here's Why It Matters," Harvard Business Review, July 5, 2017
[33] "Desire to Be Own Boss Widely Held in U.S.," Gallup, June 6, 2024

Notably, more than two years after Governor Murphy signed New Jersey's sweeping package of misclassification laws in January 2020—with state Labor Commissioner Robert Asaro-Angelo saying they would "protect employees who are misclassified as independent contractors"[34]—the state Senate Labor Committee held a hearing March 10, 2022,[35] to question Asaro-Angelo. Committee Chairman Fred Madden, a Democrat, noted at one hour, eight minutes that when it comes to the enforcement of misclassification policy in New Jersey, Asaro-Angelo had only taken action in 44 cases after all those new laws had gone into effect.

The New Jersey Labor Department's April 2025 announcement about proposed independent-contractor rule-making states that the department has now exercised its new powers 185 times, along with assessing a first-of-its-kind misclassification penalty—yet only about 12,500 misclassified workers had received payments since September 2021. The total amount paid to those workers was about $10.6 million, meaning an average per-person payment of $848.[36]

At the same time, a recent estimate put the number of New Jersey independent contractors at just shy of 1.7 million, with the cost of reclassifying even half of them at more than $5 billion.[37]

Asaro-Angelo is now claiming this new rule-making is needed to "prevent the illegal misclassification of employees," while a top labor attorney says what's being proposed "would not merely tilt the balance in favor of employee status and against legitimate ICs but rather lead to the elimination of all ICs in New Jersey."[38]

"FREEDOM TO JOIN A UNION"

One of the most Orwellian language shifts we have seen recently from the freelance-busting brigade is the claim that restricting self-employment is about giving independent contractors the "freedom to join a union." This narrative got a nationwide rollout as part of the Harris-

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[34] "Governor Murphy Signs Sweeping Legislative Package to Combat Worker Misclassification and Exploitation," New Jersey Department of Labor & Workforce Development, January 20, 2020

[35] The archived video of this hearing is available to view at https://www.njleg.state.nj.us/archived-media/2022/SLA-meeting-list/media-player?committee=SLA&agendaDate=2022-03-10-13:00:00&agendaType=M&av=V

[36] "NJ Labor Department Proposes New Rules to Address Statutory 'ABC Test' for Independent Contractor Status," New Jersey Department of Labor & Workforce Development, April 28, 2025

[37] "State-level Costs of the PRO Act: Update," Isabella Hindley, American Action Forum, May 10, 2023

[38] "Garden State May Soon Become Even Less Hospitable to Independent Contractors Than the Golden State," Richard Reibstein, Troutman Pepper Locke, May 1, 2025

Walz 2024 presidential campaign.[39] [40] In reality, we all have the freedom to join a union. We can all take a traditional job and choose to join a union. Our freedom to do so is enshrined in the National Labor Relations Act of 1935.

We also have the freedom to choose other ways of earning a living. According to Gallup, while 71% of Americans approve of labor unions, a full 80% of nonunion employees either do not wish to join, or are at best neutral on the subject. A majority of nonunion workers in the United States (58%) say they are "not interested at all" in joining a union.[41]

There is no evidence of widespread desire for the "freedom to join a union" or for traditional jobs among independent contractors. According to the U.S. Bureau of Labor Statistics, independent contractors overwhelmingly prefer our work arrangement (80.3%). Only 8.3% of independent contractors would prefer a traditional job.[42]

RECENT DATA AND STUDIES

Policy-makers who push freelance busting often suggest that independent contractors are mostly app-based "gig workers." That is not true. "Gig workers" who provide platform-mediated services such as ridesharing and food delivery amount to less than 10% of the independent contractor workforce.[43]

And among app-based workers, industry data shows 77% wish to maintain independent status.[44] This clear majority is 65% for ride-hailing drivers in non-industry findings by Pew Research Center.[45]

Here is some of the most recent research about America's independent contractors:

[39] "VP Harris tells teachers union she's 'fighting for the future,' blasts Project 2025," *Missouri Independent*, July 25, 2024
[40] "Tim Walz slams Trump and Vance's 'war on workers' in a fiery pro-union speech," *Fast Company*, August 16, 2024
[41] "U.S. Approval of Labor Unions at Highest Point Since 1965," Gallup, August 30, 2022
[42] "Contingent and Alternative Employment Arrangements," U.S. Bureau of Labor Statistics, November 8, 2024
[43] "Labor Myth Busting Series: The Gig Economy," Liya Palagashvili, Labor Market Matters, November 22, 2023
[44] "Worker Survey," Flex/Morning Consult, 2022
[45] "The State of Gig Work in 2021," Pew Research Center, December 8, 2021

U.S. Census[46]

- Women own 41.1% (11.2 million) and minorities own 36.7% (10 million) of the nation's nonemployer businesses (those without paid employees).
- Hispanic-owned firms account for 16.4% (4.5 million) of nonemployer businesses.
- Veteran-owned firms make up about 4.8% (1.3 million) of nonemployer businesses.
- Asian-owned firms account for 8.6% (2.3 million) of nonemployer businesses.
- Black or African American-owned firms are 13.2% (3.6 million) of nonemployer businesses.
- American Indian or Alaska Native-owned firms account for 1.2% (329.0 thousand) of nonemployer businesses.
- Native Hawaiian or Other Pacific Islander-owned firms are 0.3% (83.5 thousand) of nonemployer businesses.

Upwork[47]

- Skilled freelancers performing knowledge work earned $1.5 trillion in 2024.
- More than 1 in 4 (28%) knowledge workers in the United States are freelance. Those who earn exclusively through freelance work report a median income of $85,000, surpassing their full-time employee counterparts at $80,000.
- 53% of skilled Gen Z workers are already freelancing.

MBO Partners[48]

- 84% of full-time independents say they are happier working on their own.
- Fully two-thirds (65%) say they feel more secure working independently.
- 79% say working on my own is "better for my health."
- The number of independents making more than $100,000 rose in 2024 to 4.7 million from 4.6 million, up sharply from 3 million in 2020.
- Almost 4 in 10 (38%) workers older than 65 are independents, and half (51%) who report being retired and having some form of paid work are independents.

[46] "Census Bureau Releases Nonemployer Business Data by Demographic Characteristics of Owners," U.S. Census Bureau, February 8, 2024
[47] "Future Workforce Index," Upwork, April 23, 2025
[48] "State of Independence in America 2024," MBO Partners

UCLA Health[49]

- Self-employed women have a 43% lower risk of reporting high blood pressure, a 34% lower risk of reporting obesity, and a 30% lower risk of reporting diabetes compared to women who work for a salary or wages.
- Self-employed women are more likely to report exercise and a lower body mass index.

AARP[50]

- More than a quarter (27%) of older workers are doing freelance or gig work, and the number is higher (32%) for those ages 40-49.
- While 89% of gig workers say making extra money is their primary motivation, flexible work hours are a close second at 87%.

Institute for Justice[51]

- Compared to traditional small business owners, home-based business owners are more likely to be female, minorities, single and renters.
- More than half (53%) of respondents reported they started their business to make money as a stay-at-home parent.
- Nearly a third (31%) of respondents started their business because they have a disability that makes it difficult for them to work in a traditional office.
- Home-based businesses are particularly attractive to caretakers, especially mothers: 45% of respondents had children at home.

A.Team[52]

- "Highly-skilled freelancers are thriving. … These are engineers, developers, product managers, designers, data scientists, and marketers who have gone through a rigorous vetting process that places them amongst the top 2% in their respective fields. Many are ex-FAANG (Facebook/Meta, Apple, Amazon, Netflix, and Alphabet/Google)."
- 68% of survey respondents said generative AI makes them *more* likely to pursue an independent career working for multiple companies.

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[49] "Self-employed women report lower risk of high blood pressure and obesity compared to women who work for wages," UCLA Health, July 28, 2022
[50] "Gig Work on the Rise Among Older Adults as Demand for Workplace Flexibility Grows," AARP, January 18, 2023
[51] "Entrepreneur from Home," Institute for Justice, January 2022
[52] "Thanks to AI, we're in the golden age of freelancing," *Fast Company*, May 3, 2024

Fiverr[53]

- Almost 70% of Gen Z respondents are actively freelancing or plan to do so.
- A quarter of Gen Zers want to own their own business, while 14% want to freelance for their entire careers.
- 38% believe that freelancing full-time gives them the power of never getting laid off.
- Almost 36% of Gen Zers see freelancing as a good backup if they were to lose their job.
- Nearly 20% of Gen Zers believe that companies have no loyalty to employees anymore.
- Nearly 25% of Gen Zers say freelancing is more stable than a traditional full-time job.

CONCLUSION

There is an enormous difference between policy-making that stops the misclassification of employees and policy-making that hurts entrepreneurial Americans who wish to be their own bosses. Things have gone horribly awry when policy-making threatens the livelihoods of the vast majority of independent contractors who prefer self-employment.

Congress should urgently pass the Modern Worker Empowerment Act and add preemption of state independent contractor laws.

Please, stop these attacks on our freedom to earn a living, once and for all.

[53] "Layoffs Prompt Gen Z to Rethink Job Security and Careers, Fiverr Survey Reveals," Fiverr, February 28, 2024