

Brian Moriguchi: Okay. Good morning. This meeting of the California Advisory Committee to the US Commission on Civil Rights so I'll come to order. For the benefit of the public who have joined us today, I'll introduce my colleagues and myself. My name is Brian Moriguchi. I am chair of the committee. We have with us, Jennifer Friedmann. And if I miss somebody, let me know. Jennifer Friedmann's with us and Daniel Ortner, Clare Pastore, Maimon Schwarzschild, Christopher Yost. And I know I'm probably missing a few people. Anybody else from the committee here?

Brooke Peery: Rachel Sigman is here.

Brian Moriguchi: Rachel Sigman. Anyone else? Okay. Absent today is Javier Gonzalez, Gunnar Gundersen, Darryl Hunter, Chanee Franklin Minor, Velma Montoya, Star Parker, [Alice Rendez Reintein 00:01:15], and Rogelio Ruiz. Okay. So we do have a quorum and we'll go ahead and proceed with the meeting. Also present with us, our commission staff, Brooke Peery, Civil Rights analyst, [Angelica Travino 00:01:30] support specialist, and Eunnie Hur, Civil Rights intern. The US Commission on Civil Rights is an independent bipartisan agency of the federal government charged with studying discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability or national origin, all in the administration of justice. In each of the 50 states, the district of Columbia and all US territories, an advisory committee to the Commission has been established. And they're made up of responsible persons who serve without compensation to advise the Commission on relevant information concerning their respective states.

Brian Moriguchi: Today, our purpose is to hear testimony regarding Civil Rights and with implications of AB5 and the potential impacts of AB5 minority groups such as women and people of color within the state. Today's meeting will also include a period of public comment later on in the agenda and will be an opportunity for members of the public to share their perspective and opinions. If you are a member of the public joined online, Commission staff will be messaging you to see if you would like to comment. Please keep an eye on your chat box. For the members of the public who are joined on the phone with audio only, you will be able to indicate with your keyboard when we reach that point in our agenda if you would like to make a comment.

Brian Moriguchi: At the outset, I want to remind everyone present of the ground rules. This is a public meeting, open to the media and the general public. I want to remind everyone that this meeting will be transcribed from a recording for the public record. I ask that you please state your name when speaking. Panelists should limit their initial remarks to around eight minutes. After all the panelists have spoken, Advisory Committee members will have the opportunity to ask questions. In addition, written statements may be submitted to Brooke Peery at bpeery@usccr.gov. Those written statements must be submitted by April 7th.

Brian Moriguchi: Though some of the statements made today might be controversial, we want to ensure that all invited guests feel welcome and do not defame or degrade any person or any organization. As the chair of today's meeting, I reserve the privilege to cut short any statements that defame degrade or do not pertain to the issue at hand. Any person or any organization that feels defamed or degraded by statements made in these proceedings should contact our staff during the meeting so that we can provide a chance for public response. Ultimately, such persons or organizations can file written statements for inclusion in the proceedings. I urge all persons making presentations to be judicious in their statements. The Advisory Committee appreciates the willingness of all participants to share their views and experiences with this committee. I would now like to begin our meeting by introducing today's panelists. Brooke, do you want me to name each one to start or just as we go down

Brooke Peery: As we go, will be fine.

Brian Moriguchi: Okay. So the committee received full vials for each panelists ahead of today's meeting. We will begin with Veena Dubal, Professor UC Hastings law..

Brooke Peery: We're actually going to be starting with Laura Padin. Veena Dubal was not able to make it today.

Brian Moriguchi: I'm sorry. I'm looking at the wrong sheet.

Brooke Peery: Yeah.

Brian Moriguchi: No problem. Laura Padin, Director of Work Structures, National Employment Law Project. I apologize.

Laura Padin: Great. Well, thank you for the opportunity to present today. My name is Laura Padin, and I'm the director of Work Structures at the National Employment Law Project. For decades, NELP has focused on the ways in which employers can misuse various work structures like mislabeling employees as independent contractors in ways that worsen income and wealth inequality, the segregation of workers by race and gender, and the ability for workers to come together to negotiate with businesses over wages and working conditions. I'd like to begin my remarks with [Jerry Vasquez's 00:05:56] story.

Laura Padin: In 2007, Jerry, a Latino man, in his mid thirties encountered advertisements for JAN-PRO, a commercial cleaning company, claiming to offer franchises for low fees that would give people the freedom to run their own businesses. Jerry signed a franchise agreement with JAN-PRO under which he agreed to pay a \$9,000 initial franchise fee. And in return, JAN-PRO would find the cleaning clients, negotiate the most important terms of the cleaning services including the price the client would pay and assign Jerry to these clients.

Laura Padin: JAN-PRO also collected the payment from the clients. And once a month would remit these payments to Jerry minus additional fees JAN-PRO tacked on. Jerry soon realized that the so-called franchise opportunity left him earning about \$5 an hour, far less than California's minimum wage and with no way to quit without incurring thousands of dollars of debt in franchise fees, as he recounted in a recent podcast. Thinking like an entrepreneur, Jerry tried to figure out how to improve the situation. He says he tried to find ways to do the work faster, like skipping bathroom breaks or running because he could only go so fast. He did market research and concluded that his accounts, which were negotiated by JAN-PRO were often under bit. So he wanted to raise his rates. Jerry says its efforts didn't go over well with JAN-PRO.

Laura Padin: He says the company discouraged him from being involved in the negotiating process or talking to customers at all. In 2008, Jerry sued JAN-PRO from misclassifying him as an independent contractor in violating state laws, including minimum wage and overtime. The case wound its way through the courts. And in 2021, the California Supreme Court held the ABC Tests set out in its dynamics decision and codified into law in AB5 applied retroactively to Jerry's case. Though Jerry's case is still pending, this decision greatly increases the likelihood that Jerry will win his case and that he and other victims of JAN-PRO's predatory franchise scheme will finally get justice. Sadly, Jerry's case is not unique. For decades, employers have mislabeled their employees as independent contractors to depress wages and working conditions and to maximize corporate profits.

Laura Padin: Oftentimes, corporations require workers to sign ticket or leave their contract tracks attesting to their independent contractor or franchisee status as a condition of getting work, even though their working conditions do not reflect true independence. The businesses that hire them control most of the conditions of the work, including the services, they provide the price at which they provide them and the clients to whom they provide them. When employers misclassify their workers as independent contractors, these workers generally make less money than they would have if they were classified as employees. They also lose out on all employment rights and protections including the right to a minimum wage and over time, the right to a discrimination and harassment, free workplace, and the right to join a union as well as a host of benefits that form our baseline safety net system, including unemployment insurance, Workers' Comp, and paid sick and family leave.

Laura Padin: Mis-classification capitalizes on the economic despair of many workers. But the practice is strikingly racialized occurring in low wage labor intensive occupations, in which people of color in including Black, Latinas, and Asian workers are overrepresented including janitorial services, home care, trucking and transportation, and hospitality. This means that mis-classification is removing Title VII protections from the workers who most need anti-discrimination rights.

Laura Padin: In California's janitorial industry, for example, people of color make up almost 90% of contracted janitors. And over half of contracted janitors are immigrants who are born outside the United States. Similarly, in home care, the majority of workers are also people of color. People of color and immigrants already on the fringes of the economy often have no options, but to accept this type of work. In the trucking industry as well, three quarters of truck drivers in California are people of color and more than half are immigrants. Although the median wage for all truck drivers, both employees and independent contractors, is \$19.70 per hour, many truckers who work as independent contractors report earnings wages close to or below the minimum wage after accounting for expenses.

Laura Padin: A year long in investigation published in 2017, found that port trucking companies in Southern California spent the previous decade forcing drivers to finance their own trucks by taking on debt they couldn't afford. Like JAN-PRO, these port trucking companies offload so many of the risks and costs of their businesses onto their workers that these workers often make less than minimum wage. These workers are modern day indentured servants working for pennies. One driver reporting he made 67 cents one week after expenses. And knowing that their trucks will be seized and they'll lose their entire investment if they quit. In 2020, California implemented AB5, a law that adopts a clear and straightforward test for determining who's an employee and who is an independent contractor, a test that's not easily manipulated by employers.

Laura Padin: It's intended to address the rampant mis-classification in so many sectors of the economy and ensure all working people, people working for someone else, are covered by California's Labor and Employment Rights and Protections. We know passing strong laws to affirm and strengthen workers' rights and protections is just one step though a vital one in ensuring workers are able to exercise and enjoy those rights. California's working people need to be aware of their rights and confident in exercising them without retaliation. Employers need to follow the law and face consequences for not doing so. Agencies charged with implementing the law need to act with urgency and decisiveness to ensure our laws in the books are a reality for workers. So we expect that it'll take some time for California's many misclassified workers to see the positive impact of AB5, and it'll take some time for researchers to measure those shifts.

Laura Padin: That said, I do want to highlight one recent promising study by researchers at Boston College in Northeastern University who analyzed an app based delivery company that reclassified its California based delivery drivers as employees in anticipation of AB5's passage. The study found that after the transition to employment, drivers retained the same level of scheduling flexibility that they had as independent contractors, that part-time drivers total working hours increased, and that the company increased operational efficiency.

Laura Padin: We have also seen how exempting certain job categories from AB5 can lead to a race to the bottom on labor standards. As many people know, app based, ride hail and delivery companies spent millions on a successful ballot initiative, Prop

22, which exempts their drivers and delivery workers from AB5. Soon after Prop 22 passed, Albertsons, the parent company of the Safeway Grocery Store chain announced it was laying off hundreds of its grocery delivery employees in central and Southern California and outsourcing delivery to DoorDash drivers. In Northern California, where a group of 250 Safeway Drivers organized a union that like would save their jobs from outsourcing, those workers make between \$17 and 22.50 an hour and the healthcare coverage mostly paid by the company, a 401(k) with a company match and paid vacation and sick leave.

Laura Padin: In contrast, a recent study of app based delivery workers in New York city, which includes DoorDash, Ubers and Grubhub, found average net pay including tips is 12.21 per hour with no benefits. To sum up, for decades, corporations have spent untold sums to undermine people's rights at work and their economic security including mis-classifying workers as independent contractors. These tactics disproportionately harm people of color who because of occupational segregation and discrimination are working in the most precarious and underpaid jobs in our economy including misclassified jobs. As a result, the racial wealth gap is higher today than it was in 1968. By ensuring that all workers, regardless of who they are and where for whom they work, are covered by California's baseline Labor and Employment Rights and Protections, AB5 raises labor standards and improves economic security for people of color. Thank you.

Brian Moriguchi: Thank you very much, Laura. Our next presenter is Dr. Wayne Winegarden, senior fellow in Business and Economics, Pacific Research Institute. Wayne.

Dr. Wayne Wineg...: Thank you. Mr. Chairperson, members of the advisory committee, thank you for the opportunity to participate in this important hearing on the civil rights implications of AB5. My name is Wayne Winegarden, and I'm a senior fellow in Business and Economics at the Pacific Research Institute. The mission of PRI is to champion freedom, opportunity, and personal responsibility for all individuals by advancing free market policy solutions. Understanding the impact from AB5 on California's economy, entrepreneurship, low income communities and communities of color has been an important research priority for us. Our analyses have found that AB5 will impose net negative impacts on the economy and reduce entrepreneurial opportunities with a particularly negative impact on low income communities and communities of color. Based on our analysis, I would like to emphasize three themes in my comments today.

Dr. Wayne Wineg...: First, that traditional notion that entrepreneurship is an important pathway for climbing the economic ladder continues to hold today, particularly for communities of color. Second, the development of the gig economy has created new valuable options that empowers individuals to engage in entrepreneurial ventures. And last, AB5 is disconcerting because it creates barriers that obstruct the gig economy and consequently reduces the vibrancy of the entrepreneurial sector.

Dr. Wayne Wineg...: One way to demonstrate why entrepreneurship is an important pathway for climbing the economic ladder is to examine the wealth gap. Starting with the wealth gap for different ethnicities, overall, data collected by the Federal Reserve showed that the net worth of White non-Hispanic households in 2019 was \$189,100. This was nearly eight times higher than the net worth of Black non-Hispanic households, which was \$24,100. And more than five times higher than the net worth of Hispanic households, which was \$36,050. Research by the Congressional Black Caucus had found that being a business owner materially improves the situation. First, African American business owners have a net worth that is 12 times higher than the net worth of African American non-business owners. Second, being a community of color business owner materially reduces the wealth gap.

Dr. Wayne Wineg...: Comparing African American business owners to White business owners to ensure in apples to apples comparison, the median wealth of White entrepreneurs is three times higher than the median wealth of African American entrepreneurs. While this gap is still troubling, it demonstrates that entrepreneurship is significantly improving the wealth gap outcomes. And these results exemplify why a vibrant entrepreneurial sector is so important for improving the economic outcomes for communities of color. The gig economy is important in this process because these platforms help empower entrepreneurs. The through the gig economy, entrepreneurial workers are empowered to earn supplemental income that can smooth unstable earnings from a traditional job. It also allows full-time entrepreneurs to set their time, work schedule and bet on their own talents to earn a living. Importantly, most gig workers are satisfied with their current work arrangements.

Dr. Wayne Wineg...: According to surveys, the majority of gig workers are working in the gig economy by choice and more than 75% of gig workers are satisfied with their current work arrangements. It's also noteworthy that around three quarters of gig workers have health insurance. According to a 2021 study and other studies have seen health insurance rates even higher. While recognizing the broad benefits from the gig economy on entrepreneurship, it's important to recognize that the gig economy is much broader than just Uber and Lyft. The gig economy creates opportunities for handyman services through sites like TaskRabbit, care services through sites like Care.com, web programmers through Fiverr and [Tangle 00:18:37], many other professions as well. These findings matter for communities of color because research by the Pew Research Center have found that Hispanic and African Americans are more likely than White Americans to have earned money through the gig economy. Putting all of these results together indicate that the gig economy creates entrepreneurial opportunities that communities of color value and these results are consistent with the election results of Prop 22, that upheld the independent status of gig workers driving for Uber, Lyft and other driving gigs.

Dr. Wayne Wineg...: A report by the [LA Thomas 00:19:11] found that lower income areas, including plurality black neighborhoods supported Prop 22. Traditional entrepreneurs also

benefit from the gig economy, being able to purchase services from gig economy entrepreneurs. Put differently, the gig economy provides demand side benefits to entrepreneurs in addition to the supply side benefits. One of the consistent problems facing small businesses, according to the National Federation of Independent Businesses or NFIB is finding the right people, but the survey refers to as access to the necessary quality of labor. The gig economy offers these businesses greater access to the people with the skills they need on an as needed basis. Access to the talent small businesses need at the time it is needed helps small businesses more effectively manage their operations and costs. Since the gig economy creates large benefits for entrepreneurs and particularly for entrepreneurs from communities of color, obstructions that make it difficult or more costly to engage in the gig economy will have net negative impacts on entrepreneurs. And AB5 is one such obstruction.

Dr. Wayne Wineg...: AB5 harms entrepreneurship in two interrelated ways. First, forcing companies to reclassify gig workers as employees causes many current gig workers to lose work opportunities, making these people financially worse off. However, even if every impacted gig worker were reclassified as an employee, AB5 would still make gig workers worse off. Consider the following survey results. 56% of gig workers feel more secure than they would in traditional jobs. 51% of gig workers would not go back to traditional work for any amount of money. And 84% of freelancers are living their preferred lifestyle compared to just 54% of those working in traditional jobs. Consequently, AB5 reduces the available opportunities for workers who want to use the gig economy platforms to engage in entrepreneurial ventures.

Dr. Wayne Wineg...: Second, AB5 imposes an additional regulatory cost in businesses including small businesses. High regulatory costs are already a large burden on companies in the [Golden State 00:21:27] that puts businesses at competitive disadvantages relative to their larger competitors. Adding to these burdens makes it more difficult for existing small businesses to compete to the detriment of entrepreneurship. A study by the National Association of Manufacturers while based on national trends provides insights on how large regulatory costs are already. According to the latest iteration of their study, regulatory costs add \$11,724 per employee in compliance costs for small businesses. The cost of tax compliance add an additional \$4,300 per employee.

Dr. Wayne Wineg...: Put in these costs together, a small business that employs five people already spends nearly \$80,000 a year in tax and regulatory compliance costs. To put these costs in perspective, eliminating them enabled small businesses to give every employee a nearly \$16,000 annual raise without reducing the profits of the company. Not only are the regulatory costs in California larger than the national average, AB5 has significantly increased these burdens. Some estimates forecast that complying with AB5 can increase costs by 20% to 30% for some businesses. Due to the increase in regulatory costs caused by AB5, small businesses are at an even larger competitive disadvantage relative to larger companies. [crosstalk 00:22:52]. The result is to further disadvantage small

businesses and entrepreneurs. AB5 is an anti-entrepreneurial policy that reduces opportunity in California. These impacts are particularly large for low income entrepreneurs and entrepreneurs from communities of color. These adverse outcomes indicate that to better promote economic opportunities for community of color AB5 should be repealed. Thank you for the opportunity to provide these comments.

Brooke Peery: Brian, you're muted.

Brian Moriguchi: Sorry about that. Thank you, Dr. Winegarden. Before we go to the next presenter, is anybody having a problem with sound? My sound is fine, but we had a comment that the sound wasn't good.

Clare Pastore: No problem for me.

Brian Moriguchi: Okay. Fine. [crosstalk 00:23:52]. Okay. Just for the presenters, if you could speak loudly and clearly for those who are having some sound problems, that would be great. Our next speaker is Patrice Onwuka, Director of Center for Economic Opportunity, Independent Women's Forum. Patrice.

Patrice Onwuka: Great. Thank you so much. Thank you to the committee for having me speak today. My name is Patrice. I'm the director of the Center for Economic Opportunity at the Independent Women's forum. We are a nonprofit nonpartisan 501c3 organization that promotes policies that expand liberty, encourage personal responsibility and limit the reach of government. Now, my focus is on expanding opportunities for women, particularly women of color. It's my honor to appear today to explain how AB5 has denied women the freedom to pursue flexible work and hardships that that denial has caused and to cause caution other states as well as the Federal Government from adopting a similar policy.

Patrice Onwuka: So let me begin by celebrating how innovation is transforming the US economy and creating a labor market full of opportunities that women desire and depend upon. Workers across the labor force are increasingly reclaiming control over their schedules, choosing their clients, negotiating their own pay rates, shaping their work life around the priorities that are important to them. Not surprisingly, about one in five jobs in America is held by an independent contractor and that proportion is expected to grow. We saw significant gains from 2021 to 2022 in the number of independent contractors going from something like 38 million to 51 million according to some estimates. And not surprisingly, the pandemic made independent contracting all the more critical. Next slide please.

Patrice Onwuka: So women and minorities are well represented in freelancing. Women now comprise 55% of new freelancers up from 46% in 2020. According to Pew's study of online gig platforms, we've heard this earlier, 30% of Hispanic adults, 20% of black adults, and 19% of Asian adults have earned money through an online platform. That's compared to 12% of whites and certainly noticeably

higher than the US population. Millions of Californians are choosing to freelance in the gig economy. A UC Riverside School of Business analysis of app based drivers in the state found that from the fourth quarter of 2020 to the third quarter of 2021, 1.37 million drivers drove for various platforms. Over 44% of them were female and a significant number of them were African American. Next slide.

Patrice Onwuka: So when we dive into women's labor force participation in the gig economy, researchers have found not surprisingly that women self-select into jobs that exhibit greater independence, allow for more freedom to make decisions, are less structured for the worker and have shorter work weeks. As I listed out here, they're looking for control over their work. Flexibility when surveyed, women in the gig economy named flexibility among the top reasons why they gig. They're able to negotiate greater earnings. And by the way, independent contractors understand that they forego benefits and wage guarantees that traditional employees enjoy such as overtime, paid leave, and minimum wages. Yet, they choose to be independent contractors for different reasons. Independent contractors experience less risk and greater security. Two out of three full-time independent contract workers believe they are more secure than traditional workers. And add to that, greater fulfillment and positive health outcomes. 87% of workers said that they're happier working independently and 78% said that they were healthier. So next slide.

Patrice Onwuka: Now, the harm of forcing independent contractors into traditional employment arrangements is exemplified by AB5. This law which passed took effect in 2021 and applied to most contractors in the state was going to affect roughly one million workers. The businesses, they would not be able to treat all of their independent contractors as workers, but proponents assumed that the businesses would hire these workers as employees. Well, that proved to be incorrect and costly misunderstanding of business and economics as thousands of workers found themselves out of jobs. While subsequent legislation exempted over 100 occupations from AB5, many more workers still remain under AB5's test. Independent Women's Forum, we believe that AB5's forced reclassification of workers who have chosen to participate to pursue their live as independent contractors rather than employees is denying them of the freedom to work independently and to be their own bosses. This is particularly harmful to women who represent the majority of workers in certain gig sectors.

Patrice Onwuka: Many of them value, flexibility, independence, over traditional employment benefits. That is why we submitted an Amicus Brief to the California versus Mabel Bear doing businesses as Instacart's case. Specifically, in the gig economy, we recognize that the employer-employee model does not work. It would've driven these businesses out of the state. And the fact that ballot initiative supported by 59% of the California voters says that voters recognize the harm that would've been done. In addition, the administrative burden of implementing AB5 on gig economies would've been burdensome for those companies and for the independent contractors using their platforms. Since its

implementation, AB5 has wreaked havoc on California freelancers causing them to lose their incomes and livelihoods. And at IWF, we've been tracking the stories of those individuals. And you can go to iwf.org/AB5 to read those stories, but nothing tells it better than the personal story, particularly-

PART 1 OF 4 ENDS [00:30:04]

Patrice Onwuka: But nothing tells it better than the personal story, particularly of women of color. Jennifer O'Connell, for example, she was a writer, a yoga instructor, and a career reinvention coach. 22 years she spent writing as a writer. And then when the recession hit in 2008, she realized she had a special set of skills that could help people reinvent themselves. She had a passion for yoga, became her own brand in a website called As the Girl Turns. She says, "It didn't matter what time I worked, because I was talking to schools around the world. That flexibility during my day to go and teach yoga classes for my part time job, and then come back and do articles and do work in yoga certifications." helped her to earn a living. But her world was turned upside down when California Assembly five was passed. She says it was a horribly written law.

Patrice Onwuka: There are a lot of things about the law that just don't work. The odds are stacked against the majority of creative people like writers and artists whose work revolves around collaboration with other artists. Take also the story of income lost by Ronna Pressler, a mother of two who quote, relied on freelancing to earn a full-time income from home since 2016. But she lost half of her clients when AB five was passed. We had another optometrist write to us named Nancy, she could not fully be identified by her last name, but she said her income was slashed by 30%. She worked part-time so that she could raise her two boys. Quote, because being an optometrist gave me the flexibility and income to have the best of both worlds, a fulfilling career, and to be present for my kids. That was all jeopardized by AB five.

Patrice Onwuka: Monica Wyman is another story. Next slide. She was a florist. She couldn't find a job after the great recession and finally found a minimum wage job at a flower shop. Well, eventually she decided to start her own business in 2019 and founded RSVP Floral Designs. The flexibility, she said, of working for herself, enabled her to contribute to her family's finances while still being a primary caregiver for her children. She could take a step back from working while she faced a three year battle with breast cancer. She was then able to resume her business. She hires moms for her business and rotates women in and out. Again, she says, "I don't even have words to explain how bad this has been for my family."

Patrice Onwuka: Skipping to the last slide. The implications of AB five have been devastating for working women and should not be a model for any state or national policy. The ABC test is included in the House of Representatives passed Protecting the Right to Organize Act or PRO Act as well as in the Worker Flexibility and Small Business Protection Act. President Biden even campaigned on the promise of

working with Congress to quote, establish a federal standard modeled on the ABC test for all labor employment and tax laws. Well establishing the ABC test as the national standard would spread the harmful effects of AB five across the rest of the country. Eroding labor force attachment, and denying women and workers the freedom to pursue the flexible opportunities that they choose and depend upon. It is an ill advised policy that should not be replicated in every other state or at the national level. Thank you.

Brian Moriguchi: Thank you, Ms. Onwuka, appreciate the presentation. Our next speaker is Saba Waheed, Research Director, UCLA Labor Center.

Saba Waheed: Good morning. So my name is Saba Waheed and I'm the Research Director at the UCLA Labor Center. With 20 years of experience, I am here to speak as an expert on labor standards and industry wide policies, particularly as it impact women, immigrants, and workers of color. I want to begin by saying that independent contracting works great for people who have bargaining power. At the labor center, we've worked extensively with small businesses and entrepreneurs through a mix of programs and research. We supported car wash and household workers to start their own businesses. We teach a class on worker own cooperatives and entrepreneurialism. We've done research and evaluations with domestic work employers and car wash and nail salon owners. We absolutely agree that legitimate independent contracting creates opportunities to participate in our economy, especially for workers who are shut out of traditional work, such as undocumented workers and people who are formally incarcerated. But AB five isn't about legitimate independent contracting. It's about misclassification.

Saba Waheed: Unfortunately, since the National Labor Relations Act excluded independent contractors, it created a perverse incentive to misclassify workers as an independent contractor in order to evade labor laws and reduce costs. The ABC test is a simpler way to make that differentiation between independent contractor and employee, and is already practiced in over 20 states. In our research of low wage industries, we have encountered decades of erosion of labor rights protections and benefits through arm's length employment relationships like subcontracting, hiring temp work, franchising, and misclassification. These armed lengths arrangements are part of a pattern called fissuring that cuts the direct relationship and responsibility of the employer or the parent company with the employee. The goal is to make an end run around labor protections and labor rights. Don't let independent contracting distract you. We know that most bad work is still W two.

Saba Waheed: And just looking at low wage work in Los Angeles, we know that eight in 10 workers experience basic wage violations in any given week. Women and people of color are disproportionately impacted. More than half of Latinas in Los Angeles earn less than the minimum wage. Immigrant and black workers are paid below minimum wage twice as often as their US born or white counterparts. But W two employees have basic rights and access to a

mechanism to enforce those rights. They can file at the state labor commissioner and 40,000 due every year with a local office of wage standards or sue in court. Workers who experience discrimination, workplace injury, need paid sick time, or parental bonding leave, can pursue these rights at the labor commissioner or the Department of Fair Employment and Housing, the DFEH. Independent contractors cannot because they're supposed to be powerful and savvy enough to bargain for their own needs.

Saba Waheed: Yet when we look at workers in low wage industries that are deemed independent, we don't necessarily see that bargaining power. Studies have noted that misclassification has become increasingly common across various service industries. What we find is that many workers who report as self-employed are not running their own businesses, nor do they have the power to set the terms of their work, such as duties, hours, and wages. And these industries are disproportionately workers of color and women. For example, domestic work in California, which is house cleaners, childcare providers, and home care attendants. According to census data from 2019 for California, this sector is made of primarily of women, immigrants and people of color. In fact, nine out of 10 are women, three quarters are workers of color, 58% are foreign born and 42% have limited English proficiency. Over three quarters of this workforce earn low wages, which is defined as two thirds of the median full-time wage.

Saba Waheed: Nearly half of domestic workers including many that work for agencies, claimed self-employment for tax and census data, which is three times that of the overall workforce of 14%. Are these domestic workers truly entrepreneurs with bargaining power to command livable wages and hours and working conditions? Or are they getting exploited in this model that requires them to misclassify themselves, pay 1099 taxes and still earn half the median hourly wage. When we conducted a representative survey of the employers in 2016, we found a lack of employment structures common to other workplaces and very individualized practices. When employers needed to set specific conditions for hours' pay and benefits with the worker, half of them said that they didn't do any research or seek advice. They simply devised the terms themselves. If done right, domestic work requires employers in an unregulated industry to pass out their legal obligations. AB five clarifies the process for both employers and workers.

Saba Waheed: The beauty sector is another industry where we see high rates of self-employment. In our research of nail salons, census data from 2016 showed that nationally 30% were self-employed three times higher than the overall workforce. Similar to domestic work, salons are staffed by a largely immigrant and female workforce. The industry is 81% women and 79% foreign born comprised largely of Vietnamese workers. Nearly eight and 10 earn low wages compared to 33% for all workers. Small sample studies and investigative reporting have found that wage issues in the industry include low wages being paid a flat rate rather than hourly rate, minimum wage and overtime violations

and harassment and surveillance. Misclassification in nail salons can result in a two tiered system where some are employees and others are independent contractors. This creates confusion for workers doing the exact same work. But a W two employee can enforce rights through the labor commissioner while a misclassified, independent contractor may feel she has no recourse.

Saba Waheed: For their part, employers have told researchers that they too weren't clear about the rules and how to classify their workers. The ABC test is the simplest way to determine if a worker is truly self-employed or in fact, owed all the rights and protections of an employee. I conclude with data from a survey we conducted with ride share drivers. As much as we talk about the platform app, gig work is casual work. Our research found that half drove full time, two thirds were driving as their main source of income and half were driving as their only job. We also found that older immigrant parents were more likely to stay in this work and get locked into it. As co-independent contractors, these drivers ended up absorbing the cost of maintenance and liability. 44% had trouble paying for expenses and 55 would've preferred an hourly wage. The drivers we surveyed reported how their contacts regularly changed and unilaterally, and without notice. More than half of their contract had been modified at least once and 39% said three or more times. Fully 80% wanted to be able to negotiate their contracts.

Saba Waheed: All wanted workers comp, health benefits and other workplace benefits and protections. The trade off for us was clear. The work is insecure and the financial burden and risk of the work completely fell on the worker, not the companies. In conclusion, independent contracting and low wage industries often results in reduced pay and worse working conditions, and always prevents workers from enforcing workplace rights. Independent contractors who are not in a position to bargain and negotiate the terms of their work end up losing employee rights, including wage and hour laws, workers compensation, paid sick, paid leave, OSHA protections, unemployment insurance, the right to a union and protection from discrimination. A black independent contractor, for example, has no recourse when denied work due to their race, while a black employee can sue or file a claim with the DFEH. What is clear from looking at the low wage sector is that these workers in these industries may lack institutional power, whether due to immigration status, gender identity, race, or limited English proficiency. The ABC test closed a loophole in how these workers are classified, providing more clarity to workers and employers alike. Thank you.

Brian Moriguchi: Thank you, Ms. Waheed, appreciate it. Our next presenter is Jennifer Butler, Founder, Institute for the American worker.

Jennifer Butler: Great. Thank you so much for the opportunity and honor to present today. My name is Jennifer Butler and I'm co-founder and current board member of the Institute for the American Worker, a national organization focused on labor policy in America's workforce. We've been closely monitoring the impact of AB five in the subsequent industry carve outs, especially since Congress is

considering federal legislation that would take parts of AB five nationwide. And our country is still wrestling with an economic downturn, because there is much more national data available than California specific data and research on independent contracting. A lot of the studies I will cite and follow up with in my written testimony will focus mostly on national trends. But it's important to recognize that California is the most populous state comprising, approximately 12% of the country's population and houses the largest percentage of foreign board residents. So what impacts America's workforce and California's workforce impacts minorities.

Jennifer Butler: But before I get into key research associated with AB five, a quick personal story of why this issue is just so close to my heart. Five years ago, I unexpectedly became a single mom to two young kids. And at that time I was only working a few hours a week while homeschooling them. I am so thankful for independent contracting. I was able to pick up projects and cobble together meaningful work, and a schedule to suit my needs, so I could continue schooling my children and just help them adjust to some big life changes.

Jennifer Butler: Just like independent contracting was a life saver to me and my children, more and more women minorities are becoming independent contractors and it is a popular option. In July 2019, the federal Internal Revenue Service published a report entitled Independent Contracting in the US: New Trends from 15 years of Administrative Tax Data. They documented that the growth and independent contracting income receipts had been more rapid amongst women than men, especially those women who're primary earners in their household, single moms like myself. The IRS report found little evidence that firms were increasingly reclassifying existing employee relationships as independent contracting relationships.

Jennifer Butler: But they did note that firms are leaning towards hiring more independent contractors than employees. But also evidence pointed to that these firms are transitioning contractors to employees. So they're creating pipelines to fill full-time employment for those that may want the option. In December of last year, Pew Research released a report entitled The State of Gig Work in 2021, focused on understanding the demographics and opinions of individuals who work through digital gig platforms. Pew found that Hispanic adults are more likely than other racial and ethnic groups to have earned money this way, 30%. That's three and 10 Hispanic adults have done this type of work. 20% of black adults and 19% of Asian adults. These gig platform workers view their experience with earning money through platforms very favorably. The majority of respondents, 72% from the Pew Research report that they believe companies that they're contracting for are fair to how jobs are assigned. And 64% say the same thing about their pay.

Jennifer Butler: These type of workers also report a high level of satisfaction because this type of work arrangement meets their scheduling needs. In a 2017 study by Hyperwallet, they found that 96% of women reported that the primary benefit

of engaging in platform economy work is the flexible working hours. And 70% of those platform working women are the primary caregivers in their home. 86% reported that they have more control over their income by not being limited to a salary position or a set number of hours. And that gig work offers an opportunity for equal pay as with men. So it's clear that independent contracting is popular and has been growing within minority populations. But just like minorities are not one monolithic group, independent contractors are just as diverse. Contractors are a diverse set of individuals who have varied motivations for entering into these employment relationships.

Jennifer Butler: We also have to remember that compared to traditional employment, there are a wide range of activities that could count as independent contracting, especially in a labor market so dynamic and diverse as California's. So that's why these studies, any study really can't fully encapsulate and convey the dynamic marketplace of independent contracting. And why this one size fits all piece of legislation, AB five, that's trying to regulate an estimated two million independent contractors in California, representing about 10% of the state's workforce, is designed, or excuse me, not designed, but destined to become a failure. And nothing encapsulates how harmful this policy has been than a significant number of carve outs for various industries and professions. And most of the exemptions we're seeing are for highly educated majority white industries, a few examples include physicians. Only 34% of Californian physicians, and also 32% of California lawyers are people of color. Nationwide, only 27% of accountants and auditors are people of color.

Jennifer Butler: We also need to think about who's hiring these workers. According to the IRS, the increase of usage of independent contractors was faster for small and low wage businesses, fewer than 20 employees. Followed by medium sized and then finally larger companies, a hundred and more. So we have to remember that regulations and restrictions on independent workers is far more costly in burdensome for small businesses, which minorities are more likely to own than for larger companies. Being able to access the workforce in ways that meet emerging company's needs is critical for small companies and startups, and even more important for minority owned businesses who deal with a well documented problem of accessing capital to build their businesses through traditional means. But like any employment relationship, there are opportunities to improve the situation for both parties. In most of the research I cited, although independent contractors report fact very favorably about the working arrangement, the majority also expressed dissatisfaction about the lack of benefits and sometimes protections.

Jennifer Butler: The good news is that the future of work is leaning towards more choice and control in the hands of workers, truly a pro-worker agenda. And so these outdated workforce models that AB five is based off of need to innovate and then they can. And they can too, if public policy folks just get out of their way and get creative. So a couple ideas include allowing businesses to insist independent contractors. Right now, if a business provides financial assistance

or some benefit like PPE or training, that exchange could be considered employment compensation which puts that contractor at risk. And so allowing businesses to provide these benefits would help preserve workers' flexibility and earning opportunities. Benefit packages could be reimaged, so they're flexible and portable and not tied to one employer. And policy makers should encourage more independent contracting options to courage competition and improve working conditions.

Jennifer Butler: Gig economy business models could also be regulated to ensure that they don't have self-serving policies designed to discourage workers from switching services. This outdated assumption that employers and workers want to go back to a 1950 style relationship is faulty. It's a faulty assumption. Innovation workforce has opened up flexibility and earning opportunities for all Americans, especially minorities. And unfortunately AB five has put a halt to this growing movement at the worst possible time. There are countless stories and Patrice went over some of them, from women and minorities about the impact of AB five. And my organization, Institute for American Worker has collected some, which I'll include in my follow up information. But it's clear this one size fits all solution is actually harming those that's intended to help. So I'm hopeful California policy makers can step back and innovate for the future of California's minority workforce. So thank you all for listening and I look forward to questions and discussion. Thank you.

Brian Moriguchi: Thank you, Ms. Butler, appreciate that. I want to thank all the presenters today for taking time out of your day. On behalf of the whole committee, we greatly appreciate you taking the time to speak with us. We're now going to open the discussion to the committee members present to ask questions of our panelists I'll address each committee member in a roll call style so that each member will have the opportunity to ask one question. Please wait for your name to be called before asking a question. If time allows, additional questions may be permitted. In the event that there is time for additional questions, please use the raise hand function to indicate that you would like to speak, and I will call on you to address the panelist. So let's go ahead and start with questions and I will start with Jennifer Friedmann. Do you have a question for any of the panelists?

Jennifer Friedm...: Thank you so much to all of our panelists for presenting today. This has been immensely useful and well done. I'm noticing that there's a general agreement amongst all of us that legitimate independent contracting opens opportunities for a broad group of workers. But there's a tension between how AB five harms some of these independent contractors with more bargaining power and those who do not have bargaining power, to benefit from this legitimate option or who are forced into predatory misclassification schemes, such as that mentioned in Jerry Vazquez's story with Jan-Pro. So I'd like to direct this question to Dr. Winegarden and Dr. Patrice Onwuka. Could you please comment on... Guess I'm hoping that you can help me resolve this tension. And can you speak to how misclassification is addressed in your models? Some of the people

that you mentioned, for example, seem to have slightly more bargaining power. So if you can comment on that tension, would be very helpful.

Dr. Wayne Wineg...: Patrice, would you like to go first or?

Patrice Onwuka: Yeah, sure. I'll go and then I'm sure you'll have a lot more to add. I noticed in our comments... Thank you for the question first. I think that is a tension that I noticed as well. I mean, when you consider high field and not necessarily even high skilled, high earners. But there are lots of low wage earners who found that through entrepreneurship, found that starting their own business based on the skillset that they have, or frankly, just the time and the talent that they have, that they've been able to be successful, pre AB five. And then seeing all of those opportunities dry up is I think something that's going to continue to go forward. Now for those workers who were successful in being able... Who truly did experience misclassification and were able to sue, I mean, I think that's understandable.

Patrice Onwuka: And I don't think anyone on this panel would applaud whatsoever misclassification. Perhaps, maybe we disagree on whether it's rampant across the entire workforce or whether it may be concentrated in some industries compared to others. Maybe in that case, you need less of a paintbrush and more of a very fine tooth point pen to be able to address some of those industry specific problem cases. And so I think that's, again though, the challenge with very broad stroke, one size fits all, Jennifer used that term, but policy is that you're going to hurt people that you don't intend to hurt while you think you're helping someone that you think you're helping. And so that tension is just going to exist until you figure out a way to really go back to the drawing board and figure it out. And the fact that the California's legislature had to pass a pretty sweeping bill afterwards to exempt a number of occupations over 100 and still the damage has not been undone tells me that AB five was a very broad brush for a problem that didn't need such a broad approach.

Dr. Wayne Wineg...: Well, I completely agree with what Patrice just said. So I'll add to it as opposed to repeat. I think when you were talking about, you mentioned two different issues. One is the predatory contracting, and then another issue, which I think is very important to distinguish, is the policy of a social safety net. So we have a very ineffective social safety net. And I think part of what we're getting tied into this is we're hurting the labor markets by trying to address something that we need to deal with, which is why our income support programs don't work. But combining that into the labor markets only takes away the opportunity exactly what Patrice was saying. We make things on-net worse by doing that. So is there a problem in terms of, we need a better income support program? 100%.

Dr. Wayne Wineg...: This is obviously not the venue to do that, but we definitely need that. And we definitely need to enforce contracting. There's predatory contracting out there. That's an issue that needs to be addressed. Again, AB five, I love the broad base versus kind of narrowing in. That broad stroke is creating on-net. It's harming

workers. So if we need to address predatory contracting, let's address that. If we need to address income support programs, let's address that. Let's not take away opportunities and create the ascuritic labor market, which is on-net be harmful.

Jennifer Friedm...: Thank you, both.

Laura Padin: Brian you're muted.

Brian Moriguchi: Thank you. Velma Montoya. Do you have any questions for our panelists?

Velma Montoya: No, I don't.

Brian Moriguchi: Okay. Daniel Ortner?

Daniel Ortner: Yes. Thank you. First one, express appreciation for all the panelists. I had a question. This question is for Mr. Waheed and Miss Padin. The COVID-19 pandemic, I think two related things happened. One, the federal government extended certain benefits into the CARES Act and others to independent contractors. And I wonder if that shows that it's possible to have the benefits to independent contractors without having to impose this more heavy handed structure. I wonder if you could address that. And two, with the COVID-19 pandemic, as the backdrop, a lot of independent contractors experienced a lot of more flexibility and ability to get back onto their work in a more flexible fashion. And I wonder your reaction to the COVID-19 pandemic and what impact that has on your argument regarding in the benefits of employment status compared to independent contract status.

Laura Padin: Thank you for the question. I can go first. I saw the pandemic in a different way. I think it's easy for us to discount the value of employment-based benefits and protections, benefits like unemployment insurance and workers comp are essentially rainy day funds. They exist to help folks out in bad times or when something goes wrong. So we don't really think about these critical protections until we need them. And the pandemic really laid bare how precarious many independent contractor type jobs are. Because people lost work where they got sick on the job and they couldn't access these vital protections. So it was so dire, as you said, that Congress had to pass an unemployment insurance assistance program for...

PART 2 OF 4 ENDS [01:00:04]

Laura Padin: An unemployment insurance assistance program for people who are independent contractors, and that's unfair because those companies aren't paying into the system. They aren't paying into the unemployment insurance system. It's also difficult to figure out how much you're making once you account for expenses and how do you price in the loss of benefits, like unemployment insurance and worker's comp. Or having to pay both the

employer and employer side taxes, for social security and Medicare. So it gets really tough when you're a lower income independent contractor. I'll just say many of us have said, true independent contracting works great. If you're truly in business for yourself and you have the bargaining power to center negotiate the prices for your services, and this gets to Prong C of the APC test. If you have a specialized skill and independently established trade occupation or profession.

Laura Padin: But the issue is a lot of independent contractors are in that situation, the data reflects that. I'm just looking right now, UC Berkeley Labor Center put out a report just last week analyzing the incomes as reported in taxes of independent contractors versus employees in California. For people doing work as independent contractors, roughly 5% are making over \$77,000 a year, and 3% are making over \$114,000 per year, those people are doing great. It's likely because they have the bargaining power. But they're a small minority of the total independent contractors. At the other end of the spectrum 72% of people doing only independent contractor work, again this is not supplementing this with W-2 income, reported net income of less than \$20,000 a year.

Laura Padin: Now there's some caveats, we don't know how many people are doing part-time work versus full-time work. But again, these are people who are relying, their only source of income is independent contractor work. A large majority are making under \$20,000 a year. You compare that to W-2 workers, 21% are making over \$77,000 a year, and only 25% reporting under \$20,000 a year. So we have a very large contingent of independent contractors, people relying on it for their only income who are making really, really low wages.

Saba Waheed: Yeah, thanks Laura. Yeah, I want to reiterate that the temporariness of that benefit for... We were able to do some follow up COVID surveys, especially within the first year, year and a half. There was for one, a lot of confusion about what you could actually qualify for, whether it was a PPP, or PUA, or unemployment. There were ways that workers were getting rejected because they had a W-2 from one job and then independent contracting from a gig job, and so weren't actually getting some of the extended benefits. Then also just the cost to taxpayers. So also, UC Berkeley had this number, which was focused on state funds, on state information for unemployment that over \$400 million... That's what it caused to pay unemployment for gig workers, which the companies did not pay into.

Saba Waheed: We also found a lot of insufficient actions around PPE, especially for the gig workers, feeling like they had no autonomy or recourse when they thought that they had customers, clients who were coming into their cars who were sick. Not feeling like that they could actually get their health and safety concerns addressed, trying to call the companies, trying to get in touch, so it was actually a pretty complicated... And COVID being as intense and quick as it was, to actually be working in an independent contracting relationship but then actually having very little recourse when it came to the issues you were facing around COVID on a daily basis. So I actually think that yes, maybe some small part of

that could be a model, but even Prop 22, which did try to bring in some portable benefits type system, a lot of drivers are reporting the way that it's set up, I mean, it's vastly, vastly less than what they would've gotten had they been in the employee category.

Saba Waheed: Those benefits are actually very hard to access from the way that it's set up. It's not nearly as much as the marketing campaigns claim to. Then the second thing around flexibility, for us over and over when we would dig into the conditions, the flexibility always gets a little complicated, especially with some of these workforces where you don't have the bargaining power. Where it's like you feel pressure to drive certain times, or work at certain times, to accept wages that are given to you versus actually being able to negotiate the terms. A lot of what I was saying in my statement. So some of that flexibility gets curved when you actually get into the conditions of work, and then you don't have as much power and autonomy to work when and where. Some do but then often, especially when you look at where you might be in the tier, a lot of that flexibility tends to go away as the work continues and the longer that you're in that work.

Brian Moriguchi: Thank you very much. Okay. Next committee member is Clare Pastore.

Clare Pastore: Thanks to all of the panelists for really interesting and worthwhile presentations. I appreciate it a lot. In all of these discussions, I'm struck by the fact that apparently 20 states or more used the ABC Test. Of course, AB-5, I was a codification of a California Supreme Court case saying we're going to use the ABC Test. So it's not a sort of a, "Here's a brand new thing we just thought of, it's something that's in effect in a lot of states." So I'm quite curious about what we know about the situation in those 20 states that use that test. Do we know whether rates of entrepreneurship are higher or lower? Do we know whether they're higher or lower among lower income people, people of color, women? Do we know about conditions in the industries where misclassification seems to be so widespread in California, like nail salons, and truck driving, and janitorial and the care industry?

Clare Pastore: What do we know about that? Because it feels to me sometimes quite odd that we're talking about either the wonderful thing that's AB-5 or the catastrophe that's AB-5 and, "Great things are going to happen or terrible things are going to happen." But apparently this is in effect in many other states. So what do we know about how the ABC Tests function in those states and its effect on the things that we're talking about here, rates of entrepreneurship rates of pay in those states? Thanks. [crosstalk 01:07:26] I'll direct that to really any or all of the panelists. I don't think this is a question just for one panelist.

Brian Moriguchi: Any panelists want to answer that? It's a tough question. Okay.

Dr. Wayne Wineg...: I guess I'll jump in and do my best. If someone else has a better sense of some of the literature then I would be very interested in their response. Things that I've seen, all of these things are new. I think that's what makes some of this

difficult is we're learning on the go. A lot of these impacts are subtle, right? So sometimes we hit a regulation and we expect to see, hundreds of thousands of people, millions of people. Sometimes the effects are going to be much more subtle than that. So it takes time to discern exactly what's happening and what's going on. My read of the things that we have seen is that your denying opportunity and that's beginning to kind of seep its way through. But I wouldn't expect you're going to see... Markets aren't going to completely fall apart, right?

Dr. Wayne Wineg...: We're not going to see, 10 million people fall into unemployment roles. We haven't seen that, and I don't think that is the expected impact. A lot of it also hits into the growth rates, so all of a sudden you start seeing things stagnating. But you also see things, we talked about earlier, COVID. When you look at the ports, right? We looked at we couldn't get goods off of the ports, and that was contributing to rising prices throughout the country, and you couldn't get truckers there. There's a subtle inter relationship. Not causal, right? Not the only thing, but a subtle inter-relationship where AB-5 and classification was helping drive a shortage of truckers, so we saw that play out. So sometimes in economics and in society, we don't get a clean experiment. So it's harder to derive the exact answer to that question.

Brian Moriguchi: Thank you, doctor. Any other comments from our panelists?

Laura Padin: I can say I know some of the states that have adopted the ABC Test uses for only like one law, like unemployment insurance, so it's limited in that way. But we have seen kind of a growing use of state labor agencies or agencies finding that certain types of gig workers are employees. So under unemployment insurance law, so that they're eligible for UI benefit it's if they can't get work. I think New York made a determination that way, New Jersey. So the challenge then is making sure workers going forward are aware of that. But at least a couple of states have made that determination for groups of workers for purposes of UI.

Saba Waheed: Yeah. And maybe just to add on that. So the 20 states are largely for unemployment insurance, which then again, at least opens up that element of workplace protection. More like, six or seven have actually done it also for wage and hour. So New Jersey, Vermont, Connecticut, California, Massachusetts, and Nebraska are actually the ones that have also included wage and hour into the ABC Test. Then a couple of them just focus on the construction industry, not all industries. But I think the takeaway from that is even if it's for a narrower sector, or a narrower part of employment law, it still kind of puts that puts the onus on making sure that you're classifying your worker correctly, puts it on the employer. It increases the need for education. It increases deterrents from actually misclassifying. So all of those things do happen just by having the simplicity of something like the ABC Test as a framework to be able to talk about what that work relationship is.

Brian Moriguchi: Thank you. Any other panelists want to respond?

Clare Pastore: Brian?

Brian Moriguchi: Yes.

Clare Pastore: Brian, could I just follow-up? I'm sorry. I guess I should have said, I really would like to hear Ms. Onwuka, you really describe some catastrophic effects of AB-5. I'm curious about whether you can speak to the effects of the ABC Test in other states? Do you have any data that suggests that what you predict for using this test in California is substantiated?

Patrice Onwuka: Thank you for your question. I don't have anything specific for other states. I think AB California's example from the day that the law was passed and how employers responded certainly is instructive within itself. I think this is a great opportunity from some more research and looking at some other states. So thank you for that question.

Clare Pastore: Thanks very much.

Brian Moriguchi: Thank you very much. Okay, our next committee member, Alison Dundes Renteln. Alison, are you still with us?

Alison Dundes R...: Can you hear me now?

Brian Moriguchi: Yes.

Alison Dundes R...: Thank you very much for sharing your insights with us. I just have a few quick questions. One is, I don't know if this is already planned but I was hoping that you'd be willing to submit reports that include the data on which you base your remarks? So I'd just like to ask if you could do that, if you hadn't already planned to do that? I wondered what your view was of the Prop 22 modification? Whether any one of the panelists thinks that should be expanded? Then finally, if you could tell us which class, what specific civil right or civil rights are implicated by this policy?

Brian Moriguchi: That's open to, I think, any panelists. Any panelists want to comment?

Patrice Onwuka: Well, I'll just comment on Prop 22. I think it was an interesting approach. Certainly the fact that we understand that the ride sharing company certainly was successful in bringing to light what happened with AB-5, and the potential impacts on their businesses, and really on the drivers for the task, the people who work within their networks. So I think the public generally understood that. When you look at the margin of voting, pretty significant, a number amount of California voters certainly said, "No. I think it's important for us to exempt these drivers and other gig economy workers from AB-5." I do think that there's a limitation there. Certainly there are benefits that were added to those gig economy workers, but there's a limitation in terms of who else was not exempted, who else is not included.

Patrice Onwuka: It's still a challenge. It's great to say that some workers, they no longer have to worry about the economic hardship, but that doesn't mean that ever everybody else doesn't have to. We have some really powerful testimonies, videos that we've created of individuals who have really had significant disruptions to their livelihoods, that can't be ignored. Certainly continuing to exempt different occupations, this kind of chipping away at the law, tells me that maybe the law is fundamentally flawed to begin with. That goes back to my first answer to the first question that was asked about, this law. I think it was a broad approach to maybe something that didn't need to be, so that's just generally the on Prop 22.

Brian Moriguchi: Thank you. Any other panelists?

Saba Waheed: Yeah. I mean, for us, the problems with Prop 22 is it was largely companies kind of coming up with their own employment terms and putting it to voters. Which, when you talk to folks, they actually thought they were given employment rights when AB-5 had already given them employment rights. So there was a lot of confusion around the prop itself. But for us again, ensuring that the workers who are most impacted the delivery, and the rideshare drivers, having some negotiating power over those terms like that did not happen. It was very much a one-sided process in terms of, what was included in that prop, and then what became the final outcomes of it. There's been a lot of critique of what was actually included in it.

Saba Waheed: So, the fact that okay, there's going to be kind of a minimum wage floor for it. There was different numbers that were thrown out, but of the things that the calculation didn't do, which was to actually include kind of the wait time, when you turn your app on, or when you're in between customers. None of that gets counted when you're calculating the wages, when you're calculating health insurance, when you're calculating workers comp any of these things. If you do put those things in, UC Berkeley estimated that it'd be about \$5.64 cents hourly wage, not the \$20 or so that the companies were promoting. Even the lack of counting wait time our partners at UC Berkeley actually kind of described it this way, "It's like, you're basically at a retail store and you're standing at the register and you don't get paid for that time in between customers." So, Prop 22 was doing those kinds of things, which is why again, it's a very insufficient benefits packet that was not negotiated, and that workers didn't really have a say in it.

Brian Moriguchi: Thank you. Any, other comments from the panelists. In response to Alison's first comment? I think a lot of you did provide us with your PowerPoint presentations that have some of the links in there, but if it's not, or you didn't provide a presentation, if you could provide us with the links to some of your studies and especially where you're referencing some statistical information, we would greatly appreciate that. And you can send that over to Brooke. So thank you very much. Let's go on Rogelio Ruíz.

Rogelio Ruíz: Thank you, Brian. Thanks to all the members of the panel, but I do not have any questions at this time. Thank you.

Brian Moriguchi: Okay. Thank you, Rogelio. Maimon Schwarzschild?

Maimon Schwarz...: Good afternoon, everyone. I'm actually in New York City, so I'm on a different time zone. Let me [inaudible 01:19:12] some. I too would like to join our colleagues on the panel to thank every who's participated in this morning's proceedings, which has been extremely helpful and very enlightening. I have two questions, which I think I want to put really to anyone of the presenters who might want to address these. The first is this, there's been considerable talk and accusation in effect of misclassification. I wonder how precise the definition of misclassification is in California, and to what extent the ABC criteria are uniformed in relationship to other states, which have similar legislation to AB-5?

Maimon Schwarz...: And second question, which is a little unrelated, the Prop 22 amends, and to a large extent, withdraws AB-5 for a narrow and specified group of industries or services, ride sharing delivery in particular. I wonder if those of you who have presented would agree or disagree on the question of whether in principle there's any defensible difference or distinction between the areas that Prop 22 exempts, and the areas of work and life and industry rate that it doesn't?

Maimon Schwarz...: To some extent I might, those of you who are opposed Prop 22 are I suspect inclined to say that there isn't any difference in principle, and those of you who are skeptical about AB-5. You might also be inclined to say that there's no distinction between the two. The implications are obviously just opposite implications, that either that AB-5 was too broad and mistake in the first place, or that Prop 22 was unjustified. But to the extent that those of you that have a view about whether there's any principle difference between the areas dealt with by Prop 22 and exempted by Prop 22, and those that aren't, and that are therefore still fully under the regulation or under the thumb of AB-5, I'd be interested in hearing your views about that?

Brian Moriguchi: Thank you. Any panelists want to respond? Maimon, can you reiterate the first question that you had?

Maimon Schwarz...: Yes. There's much discussion about the idea or the accusation of misclassification. I wonder whether any of you can address how precisely if at all, misclassification has been defined legislatively, or in any legal context? To the extent that it has in California, to what extent the definition of misclassification is the same in states which have laws similar to, or comparable to AB-5?

Brian Moriguchi: Okay. Any panelists want to respond?

Dr. Wayne Wineg...: I'll [crosstalk 01:23:11] give it a shot talking about the misclassification, I'm sorry, the precision question. There's the ABC Test is precise language about that. So in some ways it's precise, in other ways, we have a dynamic labor market. The labor market is growing, it's changing. Our society is changing 30, 40, years ago, the need for the parent who's taking care of the child to have

flexibility. That type of arrangement has changed. COVID has changed the way we work. We're really not even sure how work is going to look a year, two, five years from now. So when you're talking about that precise kind of classification, as these things evolve that could become less relevant over time. I think it will become less relevant over time because the way we work, and the way kind of work happens is going to be very different.

Dr. Wayne Wineg...: So when you establish that structure in that foundation, it becomes very one, loopholes will appear, and it becomes less and less relevant. Particularly when we're in this volatile period where things are changing so dynamically. When you talk about Prop 22, and certainly in the differences, at its core there's no difference. Right? At its core you're talking about a work relationship and someone's ability to set the terms that they see best, versus having a government regulation come in and demand that the terms meet these specifications. Whenever you do that, whenever you set a cap or a minimum or something like that, in this case you're going to create unemployment. Either you create unemployment or you're irrelevant. So in this case people are going to be losing their jobs. People are going to be losing their opportunities.

Dr. Wayne Wineg...: Measuring is always difficult in these factors, but economically, that's just kind of the outcome that comes. So to the extent that Prop 22 brings more people out from underneath of it, that's a good thing. But now we just have this Swiss cheese of a regulation where there's some people have an exemption, whereas others don't, and they're really, very similar. So ideally, you don't want that situation, but ideally we would get everybody out from underneath of the new regulation as opposed to subjecting everyone to it.

Brian Moriguchi: Thank you. Laura. Go ahead.

Laura Padin: I can respond to that to a little bit. So I think my understanding of your question is almost like, how did we define independent contracting before AB-5? So there's a lot of case law that defined it. I think the most recent standard had been like the Borello standard which was a case, that came up with like a 10 factor multifactor test for who's an employer or an independent contractor. That was like very unclear, unpredictable, and frankly had a lot of factors that employers could manipulate. Some of the factors are like, "Did you sign a contract saying that you're an independent contract? Did you agree to be paid by service as opposed to wages?" As I tried to say in my presentation many people have to sign these contracts as a condition of getting work, but they're kind of sham contracts. So I think a few of the factors just really aren't relevant to whether someone truly is an independent contractor or not. I'm sorry, and I forgot your second question already.

Maimon Schwarzs...: The second question was how defining the criteria or the ABC criteria, how well defined you consider the definition of misclassification? And how uniform, or how similar, or dissimilar the California definition in of misclassification is to that

definition in other states, which have laws similar to, or comparable to, or virtually identical to AB-5?

Laura Padin: I don't want to speak across states. So many, many, many states look at... and this is absolutely right, the extent of control that a business has over the way the work is performed. That is a critical component. It's a component in the ABC Test that was adopted. Now, the problem is companies have particularly, [inaudible 01:27:59] companies, but many companies that again, misclassify low wage workers, they have honed in on scheduling flexibility as the end all be all of control, which it isn't. If you have some measure of scheduling flexibility, that does not mean you're in business for yourself.

Laura Padin: The hallmarks of a true business are, are you determining what service are good to provide? Are you determining the price you provided at? Or at least truly negotiating that? Are you making capital investments in a business? Are you building a customer base? Those are kind of the hallmarks of independent contract or status. So I think that control is one element of it, but you have to think broader than, do get to decide, or at least have some control over your schedule?

Brian Moriguchi: Okay. Thank you very much. Any other panelists? Okay. Let me go on with Rachel Sigman.

Rachel Sigman: Yes. Thank you, Brian. I would like to echo my fellow committee members and thanking all of the speakers. Appreciate you taking the time and sharing your insights. This is really useful for us. My question is primarily for Dr. Winegarden, but I would invite any of the panelists to weigh in if they have information related to the question. Dr. Winegarden, it seems like the assumption that is embedded in your presentation is that AB-5 has had a negative impact on entrepreneurship or starting small businesses. So I wanted to ask specifically if there's any data to that effect, if there are any studies that have been done. Relatedly, I was thinking specifically about access to credit as an important pathway of starting a business for people, and whether being reclassified from a contractor to an employee might actually help people to gain-

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Rachel Sigman: Contractor to an employee might actually help people to gain access to loans because they have a more certain source of income and an employer that they can put down as a way and build [inaudible 01:30:19] so thanks in advance for any insights you can share on that.

Dr. Wayne Wineg...: Yes. The first part of your question, there are studies actually, at PRI we've conducted a couple of studies and I'll definitely send those over to the commission so you guys can take a look and see these are reading of the data and our reading what's happening. Obviously the data there is a bit of a lag to it. So we're learning as we're going, because it just takes a while to compile. So you

rely on those data sources, but I'll happily share that with you. I apologize you, your connection was fading out on the second question. So I didn't quite hear the full question.

Rachel Sigman: Oh, I'm sorry about that. The second part of a question was specifically asking about access to credit and whether being reclassified from a contractor to an employee might actually improve a person's ability to access loans, because they have a more steady stream of income, they have an employer to report on their loan application, et cetera.

Dr. Wayne Wineg...: Well, when you're talking about access to credit, that's such an important barrier for so many startups, small businesses, things of that nature. And obviously an income stream is important, but generally speaking, financial institutions are going to be looking at either collateral or they want to be looking at the income from the business per se. It's hard to imagine that you'll be able to secure a loan with an income on something you wouldn't be able to do, because you're going to need to spend the time on the business itself. So that's not generally the most important factor in terms of addressing the credit constraints, we definitely need to do that. And some of that is with helping small financial institutions compete better because typically at least in the past, the smaller financial institutions were really the important thing is that hometown bank I'm thinking, it's a wonderful life.

Dr. Wayne Wineg...: That whole concept with a small town bank is linked in with the entrepreneurs. They know the people, they know the town and you have that relationship. And so part of what we need to do in terms of that credit is to strengthen the small financial sector. A different topic than what we're talking about today, but direct answer your question, I'm not sure the employment is an important part of overcoming that very important barrier that to the extent we do is we'd actually really help these entrepreneurs.

Brian Moriguchi: Thank you. Okay, let's go to Christopher Yost.

Christopher Yos...: Thank you, Brian and thank you to the panelists. This has really been helpful and I know that you all have put a lot of work into this and your presentations reflect the commitment you've made to these issues. So thank you for taking the time. Director Onwuka, am I saying that right? I hope so. Close it up. Comments about [inaudible 01:33:38].

Christopher Yos...: Thank you, about using a fine chisel versus a sledgehammer makes me pine for the days of the Borello test, which I think was a more refined approach than the ABC test, which is I think appearing to be a bit of a sledgehammer. But nevertheless, I do have a question for Directors Waheed and Padin on some of the concerns that the other presenters raised about the impact or the reduction or elimination of some freedoms of choice that particularly women and minorities who maybe have left the workforce because of the traditional workforce, as one of the directors put it the 1950s model, because it just

doesn't work for them for whatever reasons, whether it's flexibility or negative experiences that they've had, that they've wanted to leave those paradigms and benefit from the independent contractor relationship for whatever reasons.

Christopher Yos...: And then particularly because this organization we're interested in the impact of civil rights, there was a discussion about the undocumented immigrants and the former prisoners who have had difficulty accessing the traditional workforce for reasons relating to their status. What do you say to those groups of people who desire, who want, or maybe their only choice is the independent contractor? What's the solution for those people who whose civil rights are impacted? And then a follow up question to Director Winegarden, Onwuka, and then board member Butler. What is your response to the concerns raised by Directors Waheed and Padin on the uneven negotiating power that might be inherent in some of this independent contracting? Thank you.

Brian Moriguchi: Okay. Any panelists want to respond?

Jennifer Butler: I can get kicked off about the uneven negotiating power. In my testimony, I do bring up just potential solutions. The fact that we are looking at like a 1930s version of the ABC test in a very dynamic ever-changing workforce, there just seems to be a mismatch. We are looking to the future, but yet using relics of the past in order to guide the future of work. So there's so many exciting things that independent contractors can do to band together to have benefits that they carry with them wherever they go, that forming what could be considered unions to negotiate directly with potential companies that they could contract with. I just think we have to look beyond this traditional model, as I emphasize in my testimony and look beyond just like looking at this issue from a labor perspective.

Jennifer Butler: We're seeing some examples, I know in New York there's some examples on drivers pulling money together in order to provide benefits, there's legislation on the federal level that would encourage workers to band together and negotiate. So that's my thought is instead of throwing the baby out with the bath water and trying to shoehorn everybody into an employment status, let's look at ways to unleash really pro worker policies and empower workers to negotiate for themselves and band together and negotiate with these emerging companies.

Brian Moriguchi: Thank you. Any other panelist?

Laura Padin: I can address your question on the very real barriers that people with records and undocumented immigrants face, and it's a really huge issue. But I would say that the answer is like better to open up employment opportunities for those folks. You know what, now we support fair chance policies, everyone should be able to get work once they've been released from prison, same thing for undocumented workers. We should be allowing folks to get work that provides them with basic employment rights and protections.

Laura Padin: Now, we're not there yet obviously, but the answer isn't to say, well, for instance, in temporary staffing work is a similar issue where we see temporary staffing agencies very much target undocumented immigrants and people with records. And the jobs that are provided are minimum wage jobs with very high rates of violations of wage and hour laws, high health and safety violations. And so the answer is to raise standards in those industries and not just say that folks who are at the margins of our society have to settle for really bad work. I think that has to be addressed through other policies.

Patrice Onwuka: I'll just add to that idea that there are a lot of other policies that make it difficult for immigrants, for people with criminal backgrounds to work. And it's not just a matter of getting someone a job as a W2 employee, if someone, for example, has a criminal record in many states, it may be difficult to find a job. And number two, they may want to be their own boss and start their own enterprise, but they need a skill or they need to be certified in their skills. This is where something like occupational licensing reform, for example, creating hurdles for individuals who have criminal records who are new to this country to be able to take their skill and start their own business if they're not able to find a traditional job.

Patrice Onwuka: So I think some of these policies actually work together when you're talking about expanding opportunities for individuals and worker freedom. They're not all in one silo as if we fix misclassification of workers where it may be, then suddenly that's going to be the end all, no, actually there are other challenges that I think a lot of workers, particularly those who are very vulnerable are going to be facing. And so we have to take a broader approach to public policy.

Dr. Wayne Wineg...: I think that's incredibly important. The idea is that we can't just like mandate this and waiver wand and remove these issues, but what we need to do exactly what Patrice is saying, strengthen the institutions of the market so that they have the opportunities. Pull out healthcare and employment benefits so it's not so tied into the company so that people can build up these assets on their own. The more we can empower individuals to have their workers' comp insurance within their own accounts, they have control. So they can go from gig employment to W2 employment, and back to gig employment, maintaining health insurance, maintaining workers' compensation, maintaining unemployment insurance, because we've changed the system to empower the individual and empower the worker rather than putting all of this in the company.

Dr. Wayne Wineg...: And a lot of that means simplifying a lot of the regulations and addressing those inefficiencies. Again, as I said earlier, addressing the income support system so that this is all working in concert so that people are in control of their own economic destiny, and I think that to the largest extent is where the answer lies.

Brian Moriguchi: Thank you very much.

Saba Waheed: Yeah. Maybe just I'll do the last comments. It's just that what we're trying to talk about here is, it's all great if we feel like those workers actually have some ownership and power over those works and actually have some access to those benefits. And what we find is that that's not necessarily the case as especially when we're looking at a lot of the low wage sectors that hire self employed workers. So ABC law isn't trying to finish off independent contracting, it is just solidifying the rules so that especially those workers that are misclassified can be correctly labeled and put into the right classification and have access.

Saba Waheed: The women issue in the W2 world, because we work in that world too. We know that there a lot of issues and that there are a lot of things that need to be addressed, but we also know that when we're talking about childcare, sick time, paid family leave, money to be able to go bond with your child for new mothers, all of those things come on the employee side and we want workers to be able to have access to that and to make those things accessible.

Saba Waheed: And for us, it's like what we want is we want the workers to be able to have autonomy no matter where they are in the spectrum. But right now, the way that Laura was describing the Borello test is there was too much confusion, both when we would talk to employers and workers in terms of what those classifications actually were. And so we see the law is just reversing a lot that was confusing before. Not necessarily that we're going back in time where the work has changed, but that we're actually just trying to implement something that got lost over time, especially when we look at the kind of erosion of that employee, employer relationship.

Saba Waheed: I think things like healthcare and childcare should belong to every single person as a human right. I don't think we necessarily need to degrade employee rights in order to get those things. I think those things can also be dealt on in their own terms if we're talking about having everybody access it. So we don't want to put it the backs of workers who suddenly lose those rights because it's not being set up in the ways that we're describing.

Brian Moriguchi: Thank you very much. Okay, it is time for public comment. So I want to reiterate what my fellow committee member said. I want to thank all of the panelists for taking time out of your day and presenting to us. We greatly appreciate that. I can tell you there's probably going to be a lot more follow up questions that we'll submit through Brooke to you in the coming week or so. So thank you so much. And we just don't have enough time to really dive into all the questions that want to be post to you guys, so we'll do that in written form. So thank you very much.

Brian Moriguchi: Now let's go to the public comment. We ask that speakers adhere to the topic at hand. If speakers begin to veer away from this topic or begin discussing possibly important but unrelated topics, I will interrupt and ask to refrain from doing so. Please note that the public comment period is not an opportunity to ask questions of the panelists, but rather an opportunity to express your concerns

and opinions regarding implications of AB5 on minority groups, such as women and people of color. I'm going to go ahead and turn this over to Brooke Peery, who will facilitate the public comment.

Brooke Peery: Yes. So I'm going to announce each of our public commenters one by one, and you'll have three minutes to make your comment. For those people who are joined on the phone, if you want to press *3 on your keypad, that will indicate to us that you want to speak today and we'll get to you after all of our online participants have made their comments. So first we're going to start off with Jennifer Santiago.

Jennifer Santia...: Thank you. My name is Jennifer Santiagos and I am a Freelance Certified Healthcare Interpreter based in Orange County, California. And I'm also a steering committee member of the Coalition of Practicing Translators and Interpreters, CoPTIC America. AB5 severely threatened to kill my dream of doing the independent work that I love. As a woman with a chronic health condition and the mom of a young child, the flexibility and decision making power that I have as my own boss are essential to my wellbeing and that of my family. To illustrate how AB5 affected me, I'd like to read some excerpts from an op-ed that I wrote published in CalMatters in August, 2020, shortly before our profession won in exemption in AB2257.

Jennifer Santia...: "AB5 swept up hundreds of professions into its wide reaching net, including interpreters and translators who have a decades old history of being independent contractors. Interpreters and translators are highly skilled, highly flexible professional workforce whose expertise protects language service for million of Californians with limited English proficiency, about 20% of our state and everything from access, to emergency medical care, to voting. Over the years, my clientele has grown to include 30 to 40 language service entities that contract with me for intermittent two to three hour assignments.

Jennifer Santia...: As a freelancer, I set my own professional fees and cancellation policy, and I decide which assignments to accept and which ones to decline. This allows me time to provide preventive self care, to manage bipolar disorder, which was diagnosed in college and to care from a young family. I've contributed to a retirement count since I graduated from college and I've always paid for private health insurance, which thanks to the affordable Care Act cannot cut me off for a preexisting condition. At least 75% of professional interpreters and translators are independent contractors.

Jennifer Santia...: Not only is our profession built on this model, but also most language professionals greatly value the flexibility and the variety that this affords. I'm not misclassified or mistreated, I'm on good professional terms with interpreting agencies with whom I do business. In position of employee status knocks the wind out of my dream and destroys what I have built," end quote. Please carefully consider the perils of the ABC test, which if imposed on a national level would upend the ability of professional interpreters and

translators to do our work and with thereby compromise language access, the nine civil rights to minority populations.

Jennifer Santia...: Finally, I would like to highlight a powerful testimony and letter delivered today to the commission by leading deaf activists, an FCC advisory board member Richard Ray, about the devastating effects of AB5 to the rights of people with disabilities. Mr. Ray writes, "The hard one civil rights of people with disabilities must not become collateral damage from rash, slap dash maneuvers to misclassify highly skilled signed language interpreters or captioners who continue to operate as bonafide independent contractors and whose professional service is essential to compliance with non-discrimination under title six of the 1964 Civil Rights Act and the ADA." Thank you so much for your attention.

Brooke Peery: Great. Thank you. Again for people joined on the phone, that's *3 to let us know if you'd like to make a comment. We'll go to the next person on our list, which is Esther Hermida. Go ahead.

Esther Hermida: Thank you for the opportunity to allow me to speak. I'm Esther Hermida, President of the American Alliance of Professional Translators and Interpreters, also known as APTI. APTI was formed as a direct result of AB5 in AB2257. I'm speaking on behalf of APTI and its members to state that AB5 caused us harmed. Most of properly accredited professionals are minority females, Hispanic and women of color who provide interpreting and translation to facilitate communication between the government, private and public organizations. We are self-employed microbusinesses that provide services to all who need it. The ABC test is harmful, particularly the B test is a hindrance that prevents us from working with language service companies that act as our agents.

Esther Hermida: AB5 infringes on our right to contract with legitimate companies, simply because they are in the same business as us. As a result of AB5, we experience contract cancellations, assignments were quickly taken away, and out-of-state company stopped working with California translators and interpreters. Interpreters were able to obtain a partial exemption and translators got a full exemption after a very long year of uncertainty. But proving to our legislators that we were not misclassified or get workers as our income surpassed that of the minimum wage by far and we worked with multiple companies.

Esther Hermida: APTI maintains that we can only provide optimal language service to our community by being independent contractors, unless we are employees of the courts, as many of our colleagues are and are part of a union. But creating a labor law with many limitations on independent contractors, this law harms minority women and the public that rely heavily on the services of certified language professionals. Language equity should not be in the hands of employers. APTI is available to discuss this subject further if needed. Thank you.

Brooke Peery: Thank you for that. Our next comment will come from Ashley Hoffman.

Ashley Hoffman: Good afternoon. My name is Ashley Hoffman on behalf of the California Chamber of Commerce. As a California Chamber of Commerce, we represent about 14,000 businesses in California, most of those being small businesses under a hundred or even under 50 employees. And when the ABC test came out with the California Supreme Court in 2018, there were a lot of groups that contacted us very concerned about the strictness of this test. They felt like it really undid the Borello test and would threaten their livelihood and their access to work. When we looked at AB5 coming through the legislature, we were hopeful that this could mean some fixing tape, the ABC test, and said what we saw was really a jumbled up process as far as getting exemptions. And ironically AB5 recognizes that the ABC test is very strict, and that's why as of today after cleanup legislation, there are over 109 exemptions, and honestly, there should probably be more.

Ashley Hoffman: And what we saw during the process was a lot of clamoring of groups who felt like their livelihood was threatened trying to get exemptions, it turned into a lot of politics, a lot of lobbying trying to get those exemptions, at some points there were even sign up sheets for people who were trying to get exemptions. And at the end of the day, there's a lot of people not on that list that still really genuinely and legitimately feel like they should be, or who are treated differently from someone who has a very similar profession. And so if 109 sounds like an absurd number, it is and I think it's really a testament to how overly strict the ABC test is and how if someone else is looking to adopt something similar, you really have to dig deep to consider whether this is appropriate. And if so, which exemptions are meritorious and which ones are appropriate.

Ashley Hoffman: And I think it's also really important to look at the backdrop of California as far as workplace flexibility. One reason that the ability to be an independent contractor in California is so important is because our workplace laws are very, very strict. And while a lot of times that really does benefit employees of course, there are a lot of times where it doesn't. And we consistently, for example, have members calling who have women in their workforce who want more time to spend with their children, who want to be able to work for 10 hour days, or to be able to move around their meal or rest breaks. In California law, unfortunately just does not allow for that. There are threatens of class actions all the time for even the ties to violations. And so it's also just important to consider overall, what are we allowing as far as workplace flexibility and how does being an independent contractor versus an employee really fit into that overall scope? Thank you.

Brooke Peery: Thank you. Next we'll hear from Allison Ostrer.

Allison Ostrer: Hi, good afternoon. Thanks for allowing me to speak. I want to agree with all the previous speakers, they all gave very eloquent statements. I apologize, I didn't

have time to write up something very well spoken for today, but I just wanted to put my input in. I am a woman and person of color, I am a Washington State Certified Court Interpreter, as well Certified Medical and Social Services Interpreter. I've been doing this since 2008. I've been independent contractor that whole time, I've never once wanted to be an employee. In fact, I think I'd be miserable if I had to be an employee. There are employee opportunities available in my area and I've seen those jobs available, but I never wanted to be that. I want the flexibility, I want the benefits of being an independent contractor.

Allison Ostrer: And I've read about AB5 and what a disaster was in California, and I'm glad the next law that came about that passes an exemption for language professionals came about. But then the fact that they're bringing the whole thing now to a federal level is concerning to say the least. I think the intentions are good, but again, like some folks said before, this is taking a sledgehammer to something that doesn't need as sledgehammer. Basically I work with many different agencies and if I don't want to work with a particular agency, because they don't treat me well or I don't like the work, I can stop. I think this law is formulated for certain classes of workers that maybe do need protection, that are forced to work for certain megalith companies, for example, drivers who have to work for Uber or Lyft.

Allison Ostrer: We don't have that issue in the language world, there are many agencies. So I can go and work with whom I want to work with. So I think, yes, you should listen to the professionals on this call saying, we don't want this quote unquote "Protection." I don't want it, it will sty me my business, and that's why we need this exemption, the same one that was provided in California. Again, good intentions but wrongly applied. That's it. Thank you very much.

Brooke Peery: All right. Brian, that's all of our speakers who have signed up today, so I'll turn it back over to you.

Brian Moriguchi: Okay, great. I'll just close with just reiterating thank you to all our panelists and the members of the public for attending today's meeting. The transcript and other materials will be available within 30 days following this meeting. If you provided your email address when you joined, we will send you follow up information regarding how to access those materials. We will also notify you when the committee is meeting for follow up discussion and when the report will be available. The record will remain open for a minimum of 30 days after today's meeting.

Brian Moriguchi: If anyone would like to submit written comment, please send this by email to Brooke Peery at bpeery, that's B-P-E-E-R-Y@usccr.gov. We do have another panel plan for tomorrow, Tuesday, March 8th, from 10:30 to 12:30. So I want to thank you all again and we will go ahead and close the meeting and adjourn for today. Thank you so much.

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