

Brian Moriguchi: Okay. This meeting of the California Advisory Committee to the U.S. Commission On Civil Rights shall come to order. For the benefit of the public who have joined us today, I will introduce my colleagues and myself. My name is Brian Moriguchi, I am the chair of the committee. Members of the committee present here today are Jennifer Friedmann, Daniel Ortner, Star Parker, Clare Pastore, Rachel Sigman, Christopher Yost. Did I miss anybody who is currently on?

Maimon Schwarzs...: Yes, Maimon Schwarzschild.

Brian Moriguchi: Okay, Maimon Schwarzschild is with us. Anybody else I miss?

Rogelio Ruiz: Yes, Rogelio Ruiz is present.

Brian Moriguchi: Rogelio Ruiz. Anybody else I miss?

Antonia Crane: Antonia Crane.

Brian Moriguchi: Just the committee members. Just [crosstalk 00:00:57] for committee members. Anybody else I miss? Okay, absent today, committee members, are Javier Gonzalez, Gunnar Gundersen, Darryl Hunter, Chanee Franklin Minor.

Speaker 1: [Inaudible 00:01:12] So, the bookcase in my office and the tall... No, not the bookcase.

Brian Moriguchi: Thank you, Brooke. Where was I? Velma Montoya, Alison Dundes Rentlen. They are the ones who are absent. We do have a quorum present and I'll go ahead and proceed with the meeting. Also present, are our commission staff, Brooke Perry, Civil Rights Analyst, Angela Travino, Support Specialist and [Yuni Ha 00:01:51] Civil Rights intern.

Brian Moriguchi: The U.S. Commission on Civil Rights is an independent bipartisan agency of the Federal Government charged with studying discrimination or denial of equal protection of the law because of race, color, religion, sex, age, disability or national origin or the administration of justice. In each of the 50 States, the District of Columbia and all U.S. 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 implications of AB5 and the potential impact of AB5 on minority groups such as women and people of color within the State. Today's meeting will also include a period for 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.

Brian Moriguchi: For the members of the public who are joined on the phone with audio only, you'll be able to indicate with your keypad when we reach that point in the agenda if you would like to make a comment. At the out set, 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.

Brian Moriguchi: After all the panelists have spoken, advisory committee members will have the opportunity to ask questions. We will limit the questions to one per committee member, at this time, and if time permits, we can open it up to more questions. In addition, written statements may be submitted to Brooke Peery, at bpeery@usccr.gov. That's B-P-E-E-R-Y. Please submit those written statements by April 8th. 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.

Brian Moriguchi: 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 proceeding. [inaudible 00:04:50] I urge all persons making presentations to be judicious in their statements.

Brian Moriguchi: 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. The committee received full bios for each panelist ahead of today's meeting. We'll go ahead and begin the program but I do want to let the committee members know that when we get to the questions, I will start alphabetically but from the bottom this time, yesterday I started from the top,. Just be prepared for your questions when we get to that point. Our first presenter is Caitlin Vega, Founder of Union Made. Caitlin.

Caitlin Vega: Thank you and thank you for the opportunity to present today, it's an honor to be here. My name is Caitlin Vega and for 20 years, I have focused on the issue of contingent work, particularly misclassification in the trucking industry. This industry was transformed by deregulation and the shift from an employment model to a contractor model. Truck drivers today work significantly more hours but earn up to 50% less than they did in the 1970s before the Motor Carrier Law was warranted. An industry that was once highly unionized and provided good middle class jobs, now has 40% of drivers with no health insurance and immediate income of \$45,000 a year.

Caitlin Vega: [Inaudible 00:06:23] drivers are overwhelmingly immigrants. Many bought or leased their big rig from the company that oversees their work, sets their rates

and dispatches them on jobs. A USA TODAY'S Editorial called conditions at the ports modern involuntary servitude. Many drivers pay so much in truck leases that they owe more at the end of the week than they've earned even working 60 hour weeks. That's because the defining feature of misclassification is that workers don't get paid by the number of hours they work.

Caitlin Vega: Port [inaudible 00:06:55] drivers get paid by the load, uber drivers get paid only when picking up a passenger, janitors get a flat rate for the number of floors cleaned not the actual time it takes to clean them. Yes, misclassified workers lose out on sick days, unemployment insurance, workers compensation but the most fundamental violation of their dignity, in my view, is the unpaid labor that comes with the job. Labors' original demand was eight hours for work, eight hours for rest eight hours for what we will. The misclassified worker has no eight hour day, no right to go home to their family or be paid a premium to remain on the job.

Caitlin Vega: This system means that at the ports, trucking companies don't care how long a drive or must sit and wait for a load. It's the hours spent idling because no company is liable for the driver's time that has exacerbated air pollution, causing black and brown communities to have the highest rate of asthma in the country. That is why environmental justice and community organizations have joined with unions to challenge misclassification at the ports. These conditions extend beyond trucking to other industries like construction, janitorial, home healthcare, domestic workers and agricultural workers.

Caitlin Vega: In the aftermath of the Napa fires when air quality was among the worst in the world, local reporters noted farm workers in fire zones with no masks. Upon inquiring, they were told the workers were independent contractors and were not subject to any health and safety laws. It was in this context that the California Supreme court issued its unanimous decision in the Dynamex case. The Chief Justice, a Republican appointed by then Governor Arnold Schwarzenegger, authored the unanimous ruling, which held that the proper test of employment status was the ABC test.

Caitlin Vega: The court observed, "Wage and hour statutes and wage orders were adopted in recognition of the fact that individual workers generally possess less bargaining power than a hiring business and that workers fundamental need to earn an income for their family's survival, may lead them to accept work for substandard wages or working conditions." The passage of AB5 was not necessary to enact the ABC test. The Dyanmex decision applied it to the wage orders making it the standard wage and hour purposes.

Caitlin Vega: AB5 clarified the parameters of the decision, finding specific workers outside at scope, such as doctors, because of the ban on the corporate practice of medicine, preventing hospitals from hiring directly, other professionals not subject to wage orders, workers operating a bonafide separate business and workers hired by an individual using our referral agency. While misclassification

has always caused harm, the pandemic raised stakes. From Uber drivers to truck drivers, workers were denied access to personal protective equipment. They had no right to paid sick days, no notice of COVID exposure, no family medical leave and no reasonable accommodation for illness.

Caitlin Vega: They had no protection from retaliation when they were terminated for reporting unsafe working conditions. They had no access to worker's compensation when they contracted COVID on the job and their families had no access to death benefits when workers passed away. In the first year of the pandemic, the [inaudible 00:10:16] company waged the most expensive initiative in American history. Spending more than 220 million dollars to strip away employment protections from workers.

Caitlin Vega: Proposition 22 codified the business model of misclassification. It not only exempted ride share and delivery drivers from the ABC test, it subjected them to a new classification standard that allowed unprecedented control by the companies without any of the accompanying employment benefits. It replaced the actual protections against racial discrimination and sexual harassment that exist with employment status with far weaker and less enforceable standards and limiting the liability companies for failing to protect workers from these types of treatment.

Caitlin Vega: It included an unprecedented seven, eight's vote threshold making it virtually impossible for the legislature to ever improve these substandard conditions. It created a permanent underclass that is incapable of legally raising their payer benefits. As a labor lobbyist, I have spent the past 20 years advocating to improve worker's rights and to undo historic exclusions rooted in racism and sexism. We fought to extend daily overtime to farm workers, we continue to fight to provide Cal/OSHA Standards for domestic workers. We finally eliminated the subminimum wage for disabled workers. The underlying principle is simple, all workers are equal. Minimum labor standards should apply to all as a matter of safety fairness and the dignity of all work.

Caitlin Vega: It is tragic that in the midst of the steady progress, a workforce comprise largely of people of color was excluded from all basic protections simply because the companies that hire them use an App. In 1958, the Reverend Martin Luther King Jr, wrote that quote, 'The inseparable twin of racial injustice was economic injustice.' Misclassification of worker as independent contractors is a profound injustice that falls disproportionately on the backs of people of color. Efforts to simplify the test of employment status such as AB5, expand basic wage protections, civil rights protections, social safety net protections and access to health benefits to the worker who need them most. Advancing equality, opportunity and justice for all. Thank you.

Brian Moriguchi: Thank you, Ms. Vega. Our next speaker is Antonia Crane, Founder of Strippers United. Ms. Crane.

Antonia Crane: Hi, thank you for allowing me to be here. Stripping is a little bit of a different job than working as a driver or a freelance writer, but you may be surprised at some of the ways in which we experience similar things. For instance, strippers exist at a crossroads of multiple forms of exploitation. Here's what it looks like to be a strip at work in California. We pay to work, we pay a stage fee ranging from \$30 to \$250 per shift, we are forced to pay our own wages in cash.

Antonia Crane: Employers are quick to fire us if we ask to see a copy of our contract, if we change our hair or if we put on weight. They enact race hiring and firing policies. Club owners refuse any responsibility for our physical safety inside the club. Where there have been COVID outbreaks, shootings, fires, injuries and abusive customers. The clubs blame strippers for all of the above. With that said, you may be surprised to learn and that I love stripping and so do most of my coworkers. Next slide.

Antonia Crane: I founded Strippers United in 2018 prior to AB5 after the Dynamex ruling so that strippers could have a space dedicated to their labor rights with the hopes of unionizing. Back in the 90s I was one of the live nude girls who fought and wanted to become the exotic dancers' alliance at The Lusty Lady peep show. Right now, and for over a hundred years, unions are the recognized method to ensure protections for workers who are vulnerable to racialized violence and other kinds of discrimination. AB5, another legislative efforts to correctly classify us as employees, is necessary to file for a union election but AB5 is not enough. Next.

Antonia Crane: Strippers United has been busy. Strippers are a workforce of about 30,000 strong in California and Strippers United has a robust social media following of over 27,000 followers. That's where we've held our campaigns, mutual aid fundraisers and communications during the pandemic. Our expenses have been entirely out of pocket. We have not received any grants but we did just become a 501c3. Next. What we hoped AB5 would help us accomplish, is for starters, we would become employees and be paid wages, wage theft and tip stealing would be illegal and penalized and we would be safer at work.

Antonia Crane: The biggest problem is that we are not unionized yet. Our grassroots organizing efforts are about placing the power into the hands of strippers at work. There are considerable tensions and debates about AB5 in our industry and in our own organization but this is not to say that AB5 is to blame but that strip club owners have exploited our vulnerabilities and weaponized AB5 against workers by implementing it in a way that is harmful, expensive and enraging to strippers.

Antonia Crane: We knew AB5 never promised a smooth road to unionization or to level inequities or to counter the Putin ask misinformation campaigns, where club owners convinced dancers that having basic rights at work is bad for them, but it does mean we can organize and demand better as a workforce. Next. In 2019, what we want you to know, is that strip club owners held a conference, we have

the transcript. Where employers divide schemes to avoid, ignore, weaponize and break the law of AB5.

Antonia Crane: Some schemes that have been implemented in California strip clubs so far are, one, wage theft and tip stealing, making dancers pay our own wages and our own payroll taxes. Increased arbitrary charges, where they hand over money they earned for the first 10 to 12 dances with customers. Forcing the worker to work without pay before they are allowed to start collecting payments or any tips. Two, forcing dancers to sign bizarre contracts that are misleading and confusing, often coercing strippers to state that they are a customer instead of a worker. Forced arbitration agreements and NDAs before they can work.

Antonia Crane: Three, bribing dancers to sign independent contractor contracts and disparaging becoming an employee by making the fees and fines steeper and the rules stricter, if a dancer signs a contract as an employee. Spreading lies about unions and twisting language to promote and serve their interests, which are to exploit our labor control our bodies and act as a pimp, landlord manager, boss and abusive boyfriend. Next. Workplace safety is not created equally. When AB5 passed and COVID raged, California clubs fired BIPOC dancers at an alarming rate and then veteran seasoned dancers and any other marginalized dancers who they deemed disposable. Race and class inequities were exacerbated by AB5.

Antonia Crane: The fact is unionizing is hard and scary. But being in a precarious dangerous club at the whims of a craving club owner is far scarier. Being represented by a union for marginalized workers is the most secure option because BIPOC dancers need more power at work and they should have that power. Due to deep stigma, abuse of power and the very real criminalization of all sex workers, there exists an understandable mistrust of law enforcement without any repercussions for abusing AB5. We strippers faced hostility from club owners and feared entanglements with law enforcement. Many strippers created online strip shows to support one other and to survive. But it does be the question, what good is AB5? Next slide.

Antonia Crane: Strippers don't want their relationship with a boss to be mediated by the government. Dancers relationships with bosses need to be mediated by the union with regards to health safety, COVID, OSHA discrimination and customers being violent towards strippers. With union support, strippers may be able to use government regulations more strategically but ultimately, we need to shift power from the strip club owners into the hands of workers. Next. Here's how strippers are fighting back and what's going on now.

Antonia Crane: Clubs are being sued by strippers in an effort to recover stolen wages. Club owners have not changed their business practices. Clubs are ignoring AB5 and exploiting the broad definition of tips. Clubs are enforcing strict dance quotas which can result in dancers leaving work, owing the club money and creating economic desperation. By using AB5 as a way to extract more money from their

workforce and making strippers lives more difficult. Strippers are fighting back by filing petitions, learning about their rights and organizing workers. Next and last slide.

Antonia Crane: Thank you, Eunnie and Brooke for offering the space to strippers who are too often seen and not heard. I hope these discoveries I touched on, made clear that we know the importance of being classified correctly. We hope stripping to be a sanctuary occupation, one that is accessible and safe for people regardless of citizenship status, ability, education, race and gender. We need legit protection from wage theft, discrimination and assault in our workspaces.

Antonia Crane: Strippers are fighting back as we always have and always will. AB five has alerted club owners of the fact that as employees, we have a right to sick pay, sick leave workman's comp, unemployment insurance and a minimum wage. But this is a low bar, we have AB5, we need a whole lot more. Thank you for allowing us to be here.

Brian Moriguchi: Thank you, Ms. Crane. Our next presenter is Karen Anderson, Founder of Freelancers Against AB5. Karen.

Karen Anderson: Here we go. Thank you to the committee for inviting me to speak today at this panel. I founded my all volunteer group Freelancers Against AB5 in November 2019. Within months it grew to 18,500 members comprised of independent contractors, mom and paps, single owner businesses, nonprofits and others harmed by AB5. Next slide. Even before AB5 went into effect in January of 2020, desperate stories of lost livelihoods came pouring into my group from across the political spectrum and from all demographics and incomes. Stories of community playhouses shutting down, children's theaters closing, after school programs being shuttered and music festivals canceled. This was before COVID and it's still happening today. Next slide.

Karen Anderson: The ripple effects of AB5 spread to the most marginalized. Speech language pathologists in my group had to abandon their elderly patients who they were teaching to learn how to swallow after recovering from a stroke. Sign language interpreters told us they could not provide services to the deaf and hard of hearing. Nonprofit youth sports clubs closed their doors. Minorities lacked access to interpreters in hospitals during the pandemic. Next. To date within my group, we've identified among us more than 600 categories of professions that have been harmed in some way by AB5. Next.

Karen Anderson: Among them include auctioneers, animal shelter consultants, cancer registrars, lactation consultants, lighting directors and a whole host of professions, too numerous to name. Next. Entire sector's hard hit by AB5 include community theater and performing arts, the professional dance community, independent filmmaking, the wedding and events industry and the spa and wellness community. Next slide. Tragically, the freelance transcription profession in California is now nearly extinct because of AB5. We have dozens and dozens of

freelance transcribers in my group, most of them are seniors and women. Their once thriving careers have been taken away from them permanently by AB5 because there is no exemption for transcribers.

Karen Anderson: No, we are not affiliated in any way with ride share. Next slide. No, the State of California does not lose seven billion dollars a year in payroll tax revenue because of independent contractors. This bogus data used to pass AB5 was proven false by the Berkeley Research Group. Next. No, the exemptions have not solved the problem for countless freelancers as most of these exemptions come with caveats and fine print that often make them impossible to be taken advantage of. Because of the chilling effect of this convoluted law businesses are bypassing California freelancers all together, even if the profession has a pathway to an exemption. Next slide.

Karen Anderson: There are stories in my group of life-threatening situations created by AB5. Elizabeth Adger had to flee the State with her autistic son and her very ill husband who had stage four colon cancer, when she lost her freelance bookkeeping career overnight that solely supported her family. A forensic nurse in my group says AB5 is detrimental to rape victims. Many forensic nurses work as independent contractors for hospitals, providing sexual assault, forensic medical evidentiary examinations. Without forensic nurses patients who have been sexually assaulted can suffer long wait times on the worst night of their lives and may receive substandard exams by untrained medical personnel.

Karen Anderson: Arts therapists, Elizabeth Tobias, in my group can no longer facilitate art to underserved populations. Independent filmmaker, Margarita Rays, faces restrictions with hosting youth mentoring programs in marginalized communities. Prudential teacher Dina has a chronic disease but she can't contract for online tutoring because she lives in California. Nancy Hall is a licensed pharmacist in her 60s with a doctorate degree. Her longtime career of performing compliance inspections of pharmacies was destroyed overnight by AB5 and she has yet to recover because pharmacists are not exempt.

Karen Anderson: Another member of my group, [Jaya Knots 00:26:57] is an audiovisual tech. She made good money as an independent contractor. Now she can only work as an on-call employee, she doesn't qualify for benefits, she makes a third less than she did before and on days when she has multiple day assignments, she's sometimes sleeps in her car to save money on gas and parking that she cannot deduct. There is Gail Gordon who founded her nonprofit Opera Company in honor of her mother who was a Holocaust survivor. Her company presented music by Jewish composers suppressed by the Nazis. AB5 has exterminated her Opera and in turn has silenced this historic music.

Karen Anderson: Lori [Blunk 00:27:36] is an RN and a nurse educator. She has legally disabled with 35 benign bone tumors on her body. She lost her career to AB5 because nurse educators are not exempt. Monica Fontis is a senior, a translator and a cancer patient. She says, "AB5 destroyed my life. This work was my salvation

from depression during chemotherapy. Who will hire a sick senior like me?" Judith [inaudible 00:28:04] shared with our group that AB5 has killed the concert dance scene in Los Angeles. She says, "There is no possible way that small but culturally diverse dance companies most run by women and minorities can financially comply with this law. After COVID, AB5 is the final death now." Next slide.

Karen Anderson: But AB5 isn't just about independent contractors. With AB5 the enormous fines and penalties for misclassifying an independent contractor can put a small business out of business. The employment development department targets businesses of any size. In our group, I've heard personally from dozens of moms and paps and one person businesses, mostly single women, who are being audited right now for hiring independent contractors. I've heard from a florist, a cookie baker, a bridal veil maker, a music store owner and an architectural designer.

Karen Anderson: [Baja Malek 00:28:56] is a single woman of color who owned a platform that connected independent contractor, referee umpires with local schools and sports leagues. The lawyer fees alone put her out of business before the year long audit was completed and before referees and umpires received a last minute exemption in the cleanup bill later that year. In closing, I'd like to share one woman's EDD audit story that encapsulates everything that is wrong and cruel and in just about AB5 for both small businesses and independent contractors.

Karen Anderson: She was under audit by the EDD for her son's videography company because she was the bookkeeper who signed the checks. The audit involved three independent contractors. She had zero ownership of the business, it was owned by her son who lived next door to her in a mobile home park. Their family business allowed them to earn a dignified living while she cared for her other son, a 38 year old quadriplegic since birth. She is a Navy Veteran and a widow who spent thousands of dollars retrofitting her mobile home, with ramps, lifts and equipment for her quadriplegic son. She also raises two adopted African-American-

PART 1 OF 5 ENDS [00:30:04]

Karen Anderson: Quadriplegic son. She also raises two adopted African American toddler girls who were born drug addicted. When the auditor crunched the numbers, the woman learned that she would personally owe upwards of \$700,000 in penalties and back wages for the company's mirror, one and a half years of independent contracting relationships.

Karen Anderson: She was told by the auditor that if she declared bankruptcy, which she would've had to do, the state would put a lien on her mobile home, her son's equipment, and on her \$70,000 wheelchair accessible van. When she pleaded, where on

earth will she be able to care for her son? The auditor told her, that is her problem.

Karen Anderson: By all accounts, their independent contractors were bonafide business owners who had their own equipment, set their own hours and assignments, and had their own press credentials. One was a senior citizen in his seventies who was a retired military veteran who just wanted to stay active. He already had healthcare from his retirement. He didn't need or want to be an employee. The other was an 18 year old student who waited two years to fulfill his dream of working as an independent contractor with the company.

Karen Anderson: The trauma and expense of the audit, which dragged on for six months, forced them to abandon their family business. And the independent contractors also lost their work. These are just the tip of the iceberg of stories from members of my group whose dreams, careers, and entrepreneurial pursuits have been crushed to oblivion by California's cruelest law, AB5.

Brian: Thank you, Ms. Anderson. I appreciate that. Our next presenter is Aquilina Soriano Versoza, board member National Domestic Workers Alliance.

Aquilina: Thank you. Hello. Yes, I'm Aquilina Soriano Versoza, I'm president of the board of directors of the National Domestic Workers Alliance, and also executive director of the Filipino Workers Center of Home Care Workers in Los Angeles. Domestic workers are nannies, house cleaners, home care workers who do the work that... Well, domestic work is the work that makes all other work possible especially for women to be able to go out of the house into the workforce.

Aquilina: And domestic workers, our movement at the core of our struggle for dignity and respect in the workplace, meaning proper compensation, meaning safe workplaces and reasonable hours. And with compensation, that makes it possible for us to support our families. At the core has been the recognition that our work is real work, and that we are properly compensated for it.

Aquilina: In the 1930s, domestic workers were excluded, not because it was not real work, but as a vestige of slavery in the south with Southern Democrats trying to maintain the racial and economic hierarchy in the south by excluding domestic workers and farm workers from basic labor protections. And that's what misclassification does for domestic workers. And that's why it's so important that AB5 has been passed and it's had such a positive impact on domestic workers in California.

Aquilina: As we've been fighting for equal rights and protections, we passed the California Domestic Worker Bill of Rights, recognizing and ending 75 years of exclusion for over time protections for nannies and caregivers in California. We saw both in policy campaigns as well as on the ground in individual cases, how misclassification was rampant in our industry.

Aquilina: We find home care workers, for example, Filipino Workers Center, we help file cases for individual domestic workers, but also for class action suits for larger companies like agencies. And we see them often trying to misclassify home care workers as independent contractors, and then therefore justify paying them a daily rate or a weekly rate, which often equals to as low as 3 to \$5 per hour with no overtime.

Aquilina: This is when they're actually working as live-in workers around the clock. And when live-in workers are hired, it's usually because there really is 24-hour care needed and they are on call throughout the night, waking up several times a night, day after day, which is a really punishing job. And let's see, but over the last couple of years, as the laws have been strengthened, we've been able to get more equal recognition in the laws.

Aquilina: It's been really important to be able to have clear laws through AB5 that help us to really establish in these cases that domestic workers are employees and cannot be misclassified as independent contractors. And we've seen a real shift in the industry of not having 24-hour shifts or live-in workers, because more employers are understanding that they need to pay domestic workers.

Aquilina: If they are on call and being called to work around the clock, that they must be compensated for all of their hours worked. And that has been a great improvement for the lives of domestic workers who are often overwhelmingly women of color who these 24-hour shifts because their time is so devalued when they're working as live-in positions.

Aquilina: Oftentimes they don't have time to be with their families, but then when they are able to shift and actually get paid more, if they're paid actually minimum wage with over time for nine or 12 hour shifts instead of 20, and getting paid more for that than working on these daily rates of around the clock, it really shifts their quality of life and the quality of lives of their families, and also the level of quality care that they can provide to their clients when they're able to actually get enough sleep, and sleep when they're fully off duty.

Aquilina: So AB5 has supported our ability to make progress to improving and bringing domestic dignity and respect to domestic workers. Domestic workers tech companies have been at the forefront of trying to codifying to the law. The ability to misclassify domestic workers in several states and the National Domestic Workers Alliance has been part of the lead that's been really fighting against these because misclassifying our work, and misclassifying us as independent contractors, takes away all of our bases and our rights we're actually lifting our conditions, takes away that ability to establish minimum wage and over time.

Aquilina: It takes away our ability to establish and fight for the rights for safe and healthy workspaces as well, ability to access workers compensation. And we've made so many gains in so many different states that laws like AB5 have been really

important. And California is one of the places where we've actually seen some of the biggest improvements. And AB5 has been one of those reasons and a backbone for us to continue to do this.

Aquilina: Domestic work is one of the fastest growing jobs, both in the nation and in California. And it's really critical for us to continue to have the protections and clarity that AB5 brings to make sure that domestic workers are not misclassified, and that we are able to continue to bring cases, and to also educate both employers and workers about their rights.

Aquilina: Because in the end, that's what's going to make this industry sustainable and give rights to domestic workers who, again, are largely women of color, allow them as one of the largest workforces and largest growing workforces to be able to have good jobs that in the end, hopefully, they can retire and also have benefits and access to quality home care and other services and benefits that they also need. Thank you very much.

Brian: Thank you very much. Our next speaker is Nicole Moore, organizing committee for Rideshare Drivers United.

Nicole: Hello, my name is Nicole Moore. I'm a part-time platform driver. I joined Rideshare work when our housing costs went up so high. We had no idea how we going to continue to pay for our house even though I have a very good 40-hour week job. So I'm one of the hundreds of thousands of people have joined the gig economy even though I have dependable work. I'm also an organizing committee member, an elected president of Rideshare Drivers United in California.

Nicole: RDU is an independent driver run driver organization. And we got started in the holding lot at LAX, as we decided not just to complain about our working conditions and pay, but we decided we needed to join together as a group and fight for our rights. With over 20,000 drivers involved in our organization, we are absolutely committed to protecting the labor and civil rights of all platform workers.

Nicole: So first things first, as platform workers, we are not building our own businesses. As someone who has worked as a contract various times in my life, I can tell you for those gigs, I was indeed my own boss. I rejected contract offers that were wrong or money losers. I set the terms of the agreement. I could walk away from jobs that would cost me money. And I developed long term business relationships with clients.

Nicole: In contrast, the platform companies deployed complete control over our jobs. We have never set our own rates. Most of the time we're not even given enough information to know if we will break even on a particular ride, let alone earn a living. Many rides are actually money losers, but we don't even know

until we accept the job that it's a money loser. When we accept that job, we can see how far we have to go and what we may be paid.

Nicole: If we reject the job after receiving the information, we are disciplined for canceling the job. The platforms do not allow us to build client relationships over the long term. Lyft in fact, won't pair you with a passenger more than three times. Passengers are committed to the brand, Lyft or Uber. We do not actually have clients committed to us personally, nor can they request us personally.

Nicole: This is why court after court around the world, including here in California, finds that Uber and other ride-share companies are employers of drivers. Control, discipline standards, all set by the companies, not the drivers. While we may not be used to the idea of being managed by an algorithm, drivers and myself, I can assure you they are bosses and they exert extreme control over what we do from the time we turn the app on, till the time we turn it off.

Nicole: So just to be clear, it's not that we want to become employees, it's that the arrangement we currently have with the companies is one of employment, but without the specific and critical rights that employees have in this country. So back to AB5, early on, when legislators are considering AB5, as an organization, RDU, we made a decision as drivers to support the legislation. If the companies were going to exert the control over our jobs, we knew we needed the rights.

Nicole: In January 2020, when AB5 came into law, the platform companies of California refused to follow the law. They claimed it didn't apply to them. More than 5000 of us challenged this by filing wage claims with the California Labor Commission. This began our fight to enforce the law, but that is not the story for this room today.

Nicole: The story I want to tell is that driver after driver, whether they believed in employment or really wanted to be independent, when they wrote down what they earned and compared it to what they would've earned under basic labor law, minimum wage for all time worked reimbursement for our significant expenses, all vehicle cost, maintenance, fuel the vehicle itself, we pay for.

Nicole: Every single driver, even the ones that I still to this day stand in awe of as these really high earners, every single one was owed money. And not pennies, tens of thousands of dollars. As a whole, the more than 5,000 drivers that filed wage claims, we're owed \$1.3 billion. That's billion with a B. Now half of that more or less is damages, but even so think of about what that really means in terms of where the money is going. I mean, we don't get the majority of the fare. Oftentimes we get as little as 20 or 30% of the fare.

Nicole: So the precariousness of the job in addition is horrific. We can wake up to start our shift and bam, our mileage rates and time rates go down, right? We don't have control over that. We have zero bargaining power to change that or negotiate something better. We wake up another day and we find we're

deactivated, which means we're fired. Truth be told, even the people at the company hubs where we're supposed to go and get help with this kind of stuff, don't know why we've been deactivated as they are complicated algorithms that fire us.

Nicole: Uber will refuse to take our dashcam footage showing that the customer complaint was wrong. And that's only when we suspect it was a customer complaint. We simply have no rights in this process. Meantime, most of us who rely on this job as our primary income, qualify for medical after expenses, we're living in poverty, and we don't even have the right to form our own unions as misclassified independent contractors.

Nicole: So by calling platform workers who have no control over our work, something other than employees, what we're doing is creating a second class category of labor. And as platform workers, we are a majority people of color, an immigrant workforce. We as a country are letting Uber and platform employers rewrite institutional racism into our labor laws when they make us a second class.

Nicole: They call it a needed update to outdated labor laws. This is a violation of our rights, both labor rights and civil rights. And it's those laws are designed to protect regular people's ability to earn a living. It is a crime, it has to be handled laws like AB5 help us. Our future is working, people is at stake and I'll leave it at that.

Brian: Thank you very much, Ms. Moore. Our next speaker is JoBeth McDaniel, chair of American Society of Journalists and Authors.

JoBeth: Hello, yes. I'm actually the chair of the First Amendment committee of American Society of Journalists and Authors. And let's see, is my camera on? Should be. Anyway, I'm one of the plaintiffs in the ASJA and National Press Photographers Association lawsuit against AB5. We brought this in 2019, and we just requested a hearing with the US Supreme Court on this. That's where we are now. And we did this because AB5 is unconstitutional.

JoBeth: It targets journalists and it outlaws most self-employment, that's not just in journalism. But there's something in the report work that says that AB5 converts freelancers to employees with benefits. That's not true. The thing with AB5 is that it outlaws most self-employment without an exemption. Journalists have only a partial exemption. Someone earlier said that the dynamics decision applied to everyone, but that's not true.

JoBeth: The dynamics decision only applied to wage orders, which are things like lunch breaks. Journalists or professionals would not have been affected by that dynamics decision. AB5 expanded the ABC test to, as Karen said, more than 600 professions in California. And the exemptions were handed out in odd ways. For example, doctors were allowed a full exemption, nurses were not. Lawyers were allowed a full exemption, paralegals were not.

JoBeth: So what's happened with... And you can read more about this at assja.org, which is our website, about our lawsuit. You can read the links to the testimony of our members and NPPA members, all journalists who have been restricted and harmed by this law, who have lost careers. This has affected the news reporting in all across California. As Karen mentioned, there have been media outlets targeted by this crazy law.

JoBeth: My nightmare, my personal nightmare was started, in 2019, I had started taking classes in podcasting and audio journalism and had a \$10,000 budget I pulled together to hire five other freelancers. Now about a third of freelancers hire other freelancers. That's pretty typical actually. And I had started interviewing skilled professionals to help me get this project off the ground. 10 episodes, five people until AB5 passed and I realized that I was risking fines by the state of 5,000 per person, per incident.

JoBeth: And with five people in 10 episodes, that equals 250,000 minimum fine up to 1 million maximum fine for a \$10,000 podcast. I don't think I know anyone who would take that kind of risk knowingly. There's, maybe five so poorly written and it was revised, but the audio journalism parts are in three separate sections. And if you ask three lawyers, you'll get three different answers on that. The other thing about AB5 is this is a national fight.

JoBeth: As soon as it passed here in California, there were other states where bills were railroaded through much in the same way with no research, no debate. And in New York and New Jersey, our ASJA members sprung into action this amazing group of women were able to block those to copycat AB5 laws from passing in New York and New Jersey. And that group became fightforfreelancersusa.com. I highly recommend everyone go to that website and read about this fight, because this is a war against self-employment.

JoBeth: And we are businesses, we paid business licenses, we form LLCs and escorts, and yet we're treated as if we're abused people. Now, I don't... Let's see is my... I'm not seeing my slides up there either now but I'll just say that we had the same group, Fight for Freelancers USA, ASJA signed unto amicus brief for the National Relations Board, against the rule changes that would harm freelancers. And this amicus brief represents groups of 250,000 freelancers. And they're now revising this brief to send to the Supreme Court.

JoBeth: If my slides are showing, I had a partial list of groups that are fighting AB5, and this included, oh, I believe it was eight different [inaudible 00:55:16] chapters, the Asian American Business Council, the Hispanic Business Council, just a very long list, dozens of groups that were fighting AB5 because of the harm it did to their members, LGBTQ groups as well. Women especially have been harmed by this law, and black women especially, black businesses, 95% or solo entrepreneurs.

JoBeth: Black women have been starting businesses at twice the rate almost of white women and white men in during this pandemic. It's been an amazing success story, but here in California, they're put in the same kind of risk I was put in with my podcast. Older workers, 55 plus, are harmed terribly by this law. Most of the horror stories I've heard have involved people over 40. Caregivers, 48% of freelancers are caregivers to a family member.

JoBeth: 33% have a chronic health issue that does not allow them to get in a car and commute to a traditional job and sit at a desk for eight hours. And again, benefits, W2 employment does not mean full benefits. Part-time W2 means that you no longer have the benefits of self-employment. So in closing, when you say you support AB5, you're saying that 80% of the freelancers, including 75% of ride-share drivers in the latest UC Riverside study, who prefer freelancing to W2 jobs.

JoBeth: We're the fastest growing group of workers in the entire US. And the one thing too is financial analyst, 96% of financial analysts with the NAACP prefer 1099 contracting. So if you think that they don't know the benefits of self-employment, not sure how you go with that. Thank you for having me here.

Brian: Thank you very much, Ms. McDaniel. I want to thank all our panelists for their presentations today. I know some of the PowerPoints we couldn't follow on screen, but we have that available to all the committee members who will have a copy of that as well. So we are now going to open the discussion to the committee members present to ask questions of our panelists.

Brian: I will address each committee member in a [inaudible 00:58:12] in reverse alphabetical order so that each member will have the opportunity to ask one question. And if we have time, we'll do follow up questions as well. Please wait for your name to be called before asking any question. If time allows, additional questions may be permitted.

Brian: 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 panelists. Even though I'm going alphabetical in reverse order, I am going to call upon Clare Pastore because she is going to have to leave. So Clare, you have the first question.

Clare: Thank you very much, Brian. I appreciate that. And thank you all the panelists. It was extremely valuable to hear from all of you today, and I really appreciate your taking the time to come. And I apologize in advance that I have to go and give my own talk, which is why I have to leave in about 20 minutes. And so I appreciate jumping the cue to ask a question.

Clare: This question is for Ms. Versoza and Ms. Moore. It strikes me that we've heard a lot of things today that are not so much opposed as just different things that are all true. Clearly many workers are exploited and misclassified, clearly some

workers also are not misclassified if they are independent contractors and prefer that status.

Clare: So I wonder Ms. Versosa if you could speak, we hear a lot, we've heard some today and we have heard in other discussions among the committee about whether it's good or bad for caregivers to be employees. And we hear a lot about the situation of family caregivers. And I wonder if you could speak to whether there's some parsing that is possible so that it's not all or nothing. And [inaudible 01:00:04]-

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Clare: That it's not all or nothing. And Ms. Moore, I wonder if you could address the differing figures that we hear about what ride share drivers want or believe as a group? I mean, it strikes me that this may be not a typical instance of legislation being far less precise than it should be and being corrected over time. So I don't mean to make light of issues on either side, the grave problems that are suffered by workers who are misclassified and underpaid, and those who genuinely are, or should be independent contractors who have been caught up by. But it strikes me that much of what we've heard is that this is an imprecise law, like many laws. It needs revision like many laws. It is undergoing that process. So I wonder if we could hear a little bit about whether there are actually different kinds of domestic workers as we sometimes hear and about the ride share driver difference of opinion. Thank you.

Brian: Ms. Versosa, would you like to respond first?

Aquilina: Yes. Thank you for your question. So with caregivers, this is like a part of the industry. So there are different dynamics in different parts of the industry with post cleaners who often have multiple employers and may have their own equipment. There are certain times when domestic workers like house cleaners who come in just for like an hour or two, maybe an independent contractor in terms of the actual control and the setup. With home care workers, I've never seen it actually where the conditions are anything but that the worker is an employee specifically home care workers do not set their own hours. They are very much under the control and direction of the individual and or the family who's hiring them. So while there are agencies that very much try and get caregivers to apply for business licenses, the fact is really that the conditions are that they are on under the control of the employer, their hours, how they do their work, what they do.

Aquilina: And there's definite dynamic that happens in terms of being able to negotiate for rates. It's not the individual caregivers with agencies that negotiate, it's the agencies. And the problem is, because it's so informal and it's like making it possible for someone to say, "Okay, yes, I'll work for less than minimum wage and over time," instead of just recognizing that this is the condition, the dynamic, and then actually providing those rates because the dynamic is

especially with so many immigrant workers, they don't really have the ability to negotiate in that way. And there can be flexibility. There can be as an employee, there are different things that I think it's just because there is this problem that not everyone can afford to pay sometimes for home care.

Aquilina: And that should be solved by us as a society investing in home care so that everyone can afford and pay home care workers, what they should. But if we just let it to a market force, we see the huge high of levels of wage theft that happens and where home care workers and other domestic workers can be working for really, I mean, as I've seen as low as \$2 an hour with no overtime and minimum wage, and that's what happens that you drive the standard down, then they can retire. They don't have healthcare for themselves. And all of those jobs are very physically demanding as well. I hope that answers your question.

Speaker 2: Yes. Thank you.

Brian: Thank you very much, Ms. Moore, would you like to respond to the second question?

Nicole Moore: Sure. I think that it's pretty clear to me that I could go and get a business license, put a tad on my car that says "Nicole's ride share service" and start to develop clientele for my business, where I would have ongoing relationships with client. I would charge clients what I felt was fair and provide discounts if I wanted to induce people. I mean, I could do all those things as an independent contractor under AB-5. However, when you work for a platform, and I would say, when you work for independent contractors doing their business, you actually are employed and are supposed to have certain rights. So for me, I think you can parse it definitely, but it's really in how the business is set up and what your role in that business is.

Nicole Moore: So, I'm very clear that I could set up my own business with my own shingle on the side of my car, but that's not what I'm doing. I have a lift sticker and another sticker in my window and that's the business I do. And I'm an employee of those companies, even though the law doesn't define me that way at this time. So in terms of the 75% of drivers want to be independent. I would say that a hundred percent of the drivers want to be independent, but that is not the rules of the game in terms of when we work for these platforms, we don't set our own rates, drivers want to set their own rates. We don't have control of our work, right. Do drivers want to have control of the work?

Nicole Moore: Absolutely. They do not. Right. And so, when we made the decision to support AB-5 as an organization, and it was a long process for us to figure, we figured we would get a lot more pushback than we did it. But I think what happened was that people, as you talk to people about how much money we could be making and how little we're making when you put expenses in, people understand the difference. Right? And they understand that we aren't setting the rates. We've seen our rates go from a dollar 80 a mile to 60 cents a mile. And now from LAX,

the rates out of LAX for Uber are 32 cents a mile. So, if you think that this, I mean that, it's not rocket science, right?

Nicole Moore: We are being terribly exploited and we do not have the power to set our own rates. The other thing I think that's really important about this point is this idea of flexibility, right? And I would say that all work in America needs to be more flexible, whether it's because we have family members to take care of, whether we have to pick up our kids from school, whether we have another job where we don't have control of the schedule, we need more flexibility in jobs as a whole, but flexibility is not incompatible with labor law, but that's the thing that is so insidious about the marketing line of Lyft and Uber is that you can't have flexibility if you have labor rights. What I'll add is that when they first started these platforms, they actually had us check what shifts we wanted to work. Right?

Nicole Moore: Well, guess what, they couldn't get people to work certain shifts. And so they figured out the whole incentivizing like create higher rates for Friday night. And that's how they started filling their shifts, right? Was by incentivizing more drivers on the road at different times, they're not opposed to shifts. They have the control, they could set shifts right now, if they wanted, and under labor law, they could choose shifts or not shifts. And that is so a lot of times when people say, "Oh, well, all the drivers I've talked to want to be independent." I would say, "That's true, but we're not." And then the other thing is that people equate employment with no flexibility. And it's not incompatible for law, but I think as a country, we have to stand up job for flexibility more.

Brian: Thank you, Ms. Moore. Okay. Next up with a question is Christopher Yost.

Christopher Yos...: Brian, thank you. And I'd like to thank all the panelists for their very thoughtful presentations today. Clearly you put a lot of time and effort into it. So thank you for that maybe I'm revealing some naivety on my part, but founder Crane, was horrified at some of the exploitation you described in your presentation. And I'd just be curious overall, do you think AB-5 has been beneficial to members of your Strippers United group, or has it resulted in worse conditions? And then, because I'm only entitled to one question I'm going to ask two in the same question and ask Ms. Chairman McDonald, if you would respond in your view to the percentages differences in the ride share to the view that Ms. Moore just expressed in response to Claire's question.

Brian: Let's start with Ms. Crane.

Crane: Hi, can you hear me okay? We have an issue with bandwidth stuff. Great.

Brian: Yes.

Crane: Great question. Thanks for asking it. I would say that the implementation of AB-5 because of how it was used by the strip clubs has made things worse for

strippers and enraging for strippers, because of all of the reasons the previous speaker has highlighted so eloquently having to do with the misinformation campaign and manipulating the laws in order to exploit workers. So the way that it has been implemented has punished strippers in California. And so that's where we are, but we are classified as employees. We were employees before, but it is supposed to be a helpful law that is hurting strippers.

Christopher Yos...: Founder, crane. If I could just follow up one, one of the issues that first made it onto sort of our radar was that some of these provisions or some of the treatment you've described under AB-5 have forced strippers into other lines of sex work that they would've preferred not to have been pushed into. Can you shed any light on that?

Crane: Well, I think that when a person is fired and not treated well on the shop floor, air force to take a less safe and worse job. So it ends, it's a downward spiral and it is enabling for it's not their fault if they're forced into situations that are more precarious, we're talking about precarity. I think that's what you're asking.

Christopher Yos...: Yes.

Crane: Yeah. And so it ends up being a very precarious situation for them.

Christopher Yos...: Thank you, founder Crane. I appreciate your insights.

Crane: Thank you.

Brian: Ms. McDaniel, can you respond to Mr. Yost's second question?

JoBeth: Yes. The study that I referred to is one from 2022. I believe it was the end of January. The University of California at Riverside, did a poll of, I believe it was 1500 ride share drivers. And again, 75%, I have the link in my slideshow too. 75% preferred to be 1099 and 82% I believe it was, were happy with their work on the apps. So, I mean, I'm a journalist, there've been so many studies and I have yet to see a study of rideshare drivers that doesn't have those percentages. Also The Bureau of Labor Statistics. It's 79% of independent contractors across the board who prefer to be contractors. You can go through Upwork has a study every single year where they interview independent contractors, freelancers, they come up with, sometimes even higher than that, depending on the occupation, depending on the age, people who are over 50 or far more likely to be self-employed and prefer self-employment I was a W2 this may surprise some people.

JoBeth: I was a union member. I was a very gungho union member joined when I was an adjunct professor at a California college. I was a state of California employee W2. I had zero benefits as most adjuncts have I had no job stability whatsoever. And I quit and went back to full-time freelancing and I doubled my earnings pretty quickly with freelance contracts. So, and that again, if you look at Upwork

is a very common situation with people who have left W2 jobs. I believe it's 65% are making more money within six months of leaving the W2 job.

JoBeth: So this whole notion that W2 employment is great for everyone or that it confers benefits is just false. It doesn't stand up. If you look at the actual statistics, I think there are a lot of people maybe who haven't been union members who may have a different idea of what benefits that confers as adjunct professors, about 40% or own government benefits, a third live below the poverty line they're living in their cars. It's a horrible situation. And these are W2 employees of the state of California who are protected by one of the most, or some of the most powerful unions in existence. It's shameful, grad students who are teaching the union doesn't really care to support them when they strike. So we had that in Santa Cruz recently. So, I'm a journalist, like I said, show me the statistics and those are the statistics.

Christopher Yos...: Thank you too, Daniel. I appreciate your insights.

Brian: Yes. Thank you very much. Next up committee member, Rachel Sigman.

Rachel Sigman: Thank you. I also want to thank the speakers for being here today and sharing your insights. I also found them to be very valuable. I wanted to ask, as you know, the core of our project is about civil rights and specifically about the potential disparate impacts of AB-5 and of misclassification generally on people on the basis of their race, color, religion, sex, or national origin as specified by the civil rights act. So for each of today's speakers, I wanted to ask if you would be able to provide any additional information and specifically about the demographic compositions of the groups that you represent. And I don't know if you would want to speak to that now or possibly just share that information with us via email or in writing, but I think it would be very helpful for the committee to gain more specific statistical data about the demographic compositions of the populations you represent. So that's basically what I wanted to ask speakers are welcome to answer or follow up later. Thank you.

Brian: Would any speaker like to respond to that?

Aquilina: I'd just like to say, definitely can provide a report for you, the demographics here in California, as well as a national picture of who domestic workers are, but overwhelmingly women of color, overwhelmingly immigrants, and a lot of women from the black community as well.

Brian: Thank you. Anyone of else like to respond? You can also submit something in writing. If you have a link to a study, that would be great. Okay. Let's go on to Rogellio Ruiz.

Rogellio Ruiz: Thank you, Brian. I don't have any questions at this time.

Brian: Okay. Thank you. Rogellio. Star Parker. Star Parker? Daniel Ortner.

Daniel Ortner: Thank you very much. And I echo everyone's sentiment that the speakers have been phenomenal, and I thank you for your participation. I would also just want to encourage all, especially any speaker who shared stories about individuals that they're familiar with to consider getting those submitted by those individuals to the commission. I think it would be very valuable to have those stories or more details about those stories. So I think great to supplement with either those individuals sending those stories, or you submitting individual details about those stories. So I would just encourage everyone, especially Ms. Anderson and Ms. McDaniel and others who especially as well, I think shared some stories, quite a few of you shared stories. I just recommend encourage the submission of those to us. My question, I have a question for Ms. Anderson and Ms. McDaniel, and a related question for Ms. Versosa on the topic of age discrimination and disability or discrimination.

Daniel Ortner: For Ms. Anderson and Ms. McDaniel, you mentioned some interesting in insights about the potential for age discrimination or disability based discrimination. I wonder if you have, could elaborate on the... Provide more details about if you especially statistical details about the nature or degree of discrimination on the basis of age or disability and the impact of AB-5 on those communities, more insights into that, Ms. Versosa. I didn't have a question related to disability discrimination. I suppose you mentioned that live-in workers are vanishing as a group because of the changes of AB-5. I wonder if you have any information about how the loss of those workers is that negatively affecting the elderly or disabled individuals that those workers were once serving. Is there now a vacuum, a lack of care for adult, for disabled individuals as a result of changes in the industry? And I wonder your thoughts on what might be filling that gap? And for those that are being served, we were previously being served by living workers and maybe now are not being served in the same way.

Karen Anderson: Yes, I can feel the question about ageism and AB-5, as I mentioned, freelance transcriptionists in our group are comprised mostly of seniors in their 60s, 70s and 80s supplementing their social security. These are people who were thriving with their self-employment opportunities. And we have a lot of seniors in my group across all spectrums of professions. The unfortunate thing about seniors, be they translators and interpreters or health workers, or transcriptionists is that when they get dumped by their client or rejected from their platform are told, "We cannot work with independent contractors in California," they have the opportunity for them to gain W2 employment. It's almost next to impossible at that age because they're older people, seniors are discriminated against in the workplace. A lot of these companies prefer to hire younger people.

Karen Anderson: So what we're seeing in our group is just a whole host of hundreds of thousands of people falling through the cracks because not only do they lose their self employment opportunities, they also are precluded really from going into the traditional workforce and getting hired and edit at a job that would even pay equivalent to what they were making before when they were studying their

own hours and their own rates. And of course the disabled are really, really impacted. And the chronically ill, too. These are people that cannot go into the physical workplace.

Karen Anderson: They have to be able to stay at home, to be able to make a living. So many people have been deprived overnight of their careers by AB-5. And as I mentioned, we had hundreds of stories pouring into my group of people that were just completely left helpless, either stay at home moms with disabled children, family caregivers, who are caring for a loved one at home and need to be there 24/7, and still are living while working at home. And there were life threatening situations that happened when all these people just got dumped from their careers with nowhere to turn except to flee the state.

Brian: Thank you, Ms. Anderson, Ms. McDaniel, would you like to respond?

JoBeth: Yes, my slideshow, if it showed, I've got one thing from the Urban Institute that 56% of all workers over the age of 50 are pushed out of their long term jobs before they've made the decision to retire. I've certainly seen that all over the place. We had a radio station here in LA where four very experienced staffers were booted from their job and quietly replaced by four very young and experienced staffers for less money. The union did nothing to help those people. Also, 65% of baby boomers who freelance are planning to transition, use the freelancing to transition into retirement. That's a very important part of freelancing.

JoBeth: And that's older women, as Karen mentioned are far more likely to be the long term unemployed. I used to write for ARP and the studies are just horrifying older men do a little better with W2 employment, but older women are pushed out right at the time when often they are caring for their parents or the sandwich generation caring for kids and parents there's age discriminate as soon as 40 there's certainly age discrimination for women of pregnancy age as well, pretty much any group that has discrimination in hiring or promotions, you're going to see them trend more towards self employment.

JoBeth: And like I said, black women are just gangbuster starting new businesses. It's pretty amazing. A lot of states are working with the federal government to help these women. California is not one of those states. And there are other states that have grants and training for people to learn self-employment, which is super important. I feel like so many of the people who are saying, "Oh, self-employment is terrible." Well, yeah, if you opened a restaurant and knew nothing about running a restaurant, you'd probably go under too. Self-employment is something that you need more training. You need some grants sometimes, or some help at different stages. So I would like to see our government take that into consideration, especially for our older women who are the hardest hit by this.

Brian: Thank you, Ms. McDaniel, Ms. Versosa. I think Daniel said it.

Aquilina: Yes. And just to say that a large part of the home care workforce are also seniors themselves, right? Working and being an independent contractor. What I see is that only pushes down wages, maybe there's opportunities, more opportunities to work, but for very lower wages, I just don't see that as of the solution. I think we should still value the work of older women to be able to do the work and also to receive the pay that they should get for doing the work it's more lesser. And I don't know how that necessarily gives you an advantage by being an independent contractor in terms of home care thinking, if it's specifically definitely can have different dynamics in different industries, but towards your question in terms of, since the live-in setup is definitely shifting and going down, that has shifted some things.

Aquilina: So one is that there's more actual shifting happening. So those who need care around the clock then can actually get multiple people. We actually incubated a home care cooperatively owned agency, and all of our clients need 24 hour care. And so we have two that rotate so 12 hours and 12 hours, and there's four caregivers that work with one individual for seven days a week to provide that kind of care because otherwise it's really just subsidizing that work on the backs of the women, right? In terms of the whole 24 hour care, if you're just not paying for it, then it's really being subsidized by those women.

Aquilina: So there's been a shift in the industry that way it does mean that not everyone can afford to pay that, but there is this huge crisis that we have right now of so many people not being able to afford, including the care workers who, when they need it, when they're older, they haven't had healthcare, they haven't had retirement benefits and they can't afford to have care. So the solution is really about, we have a broad coalition where we're working together to get more investment, but there's no way that we're going to actually transform this industry and help continue building these to be good jobs, unless we actually value the work and company that state the work as needed. And so hard, sometimes it's about family members stepping in and helping out at different times, if that's possible.

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Aquilina: Are stepping in and helping out at different times if that's possible but it's also about shifting. Sometimes it can be three workers at a time to be able to provide it. Not everyone needs 24 hour care however, so there can be different setups. But even at the setup before where there was more live-in work, there was still plenty of people who can't afford home care and the solution should not be on the backs of the workers accepting illegally low wages.

Brian: Thank you very much. Velma Montoya.

Ms Montoya: Yes. I want to thank the [inaudible 01:30:47] and I don't have a question. Somebody asked you of them and one can be mine. Thank you.

Brian: Thank you, Velma. I'm going to go ahead and throw in a question to all the presenters. We hear a lot of the benefits of being an independent contractor in choice and on the other side, we hear a lot of complaints about not having the benefits of being an employee. Can any of you provide any suggestions or recommendations or solutions that would marry the two together to address those problems where it's not one or the other, but maybe there's a solution where independent contractors can still get those benefits or employees can still have flexibility. And that's open to any presenter.

JoBeth: I'll add into that. The federal government has had misclassification laws for 80 something years now. They are rarely enforced it feels like. It's very easy to call and make a misclassification claim. States have, California, gosh let's say Jerry Brown signed it 2011/12 SB459 that addressed misclassification and didn't see a lot of enforcement. There wasn't a budget put in for much enforcement of that. 85 is just a huge overreach. If they had stuck with maybe dynamics with jobs that required wage orders, lunch time and overtime, we'd be in a different now. It was a huge overreach and with no research. That's part of, I kept saying, I want to see the impact study. I've written about government for years. I want to see this research and the answer was there wasn't any. They basically went to the unions and said, tell us why we need this and...

JoBeth: Just look on this panel. Karen Anderson and I have both been freelancers for most of our adult lives. We've both had W2 jobs, I believe. Karen has, I have. I know the difference. And we're getting a lot of feedback from people who don't understand self-employment on a law that outlaws most self-employment without an exemption. So that's a problem right there, I feel like that's the key to it, is involve us in these decisions. Don't just say, oh you hate unions or whatever. Involve the people who are going to be affected in these decisions and not these outside groups that may have some financial incentive.

Karen Anderson: Yeah. I'd like to add to that.

Brian: Thank you. Any other?

Karen Anderson: I'd like to add to that.

Brian: Go ahead.

Karen Anderson: AB5 does not ensure full-time.

Brian: Go ahead, Ms. Anderson.

Karen Anderson: Can you hear me? Can you hear me?

Brian: Yes, go ahead.

Karen Anderson: Okay. AB5 does not ensure full-time employment and therefore full-time benefits. It doesn't force the hiring entity to hire anybody. Nine times out of 10 they eliminate their relationship with the independent contractor or if they even have anything to offer them, it might be a part-time job. Many of the people that we see who are getting kicked to the curb by AB5 are one-offs. People who might show up for a single night engagement that would have to be turned into a W2 employee. And therefore work benefits, no you're not going to get benefits from part-time work or one off or seasonal or anything like that.

Karen Anderson: So this myth that AB5 is going to somehow create all these full-time jobs for people and give us all benefits is just false and there's the other myth is that we're all poverty stricken, all of us. We make good money as self-employed people. I have always been able to afford top tier health insurance for myself because I make that a priority and we have write offs. And we have people in our group that are six figure earners and career professionals and licensed professionals, people with doctorate degrees. These are people that have been kicked out of their careers and they have to start over from scratch.

Brian: Thank you, Ms. Anderson. Any other panel?

Crane: Yes. I wanted to add to that. Can you hear me?

Brian: Yes, go ahead.

Crane: Yeah, you're asking if there's a third way or some sort of flexibility and I think being an employee can have flexibility. I think it can have the things that we need as workers to stay safe in our workplace and have the policies that we need but we have to push for those rights and employers have every interest to not pay employees and pay payroll taxes. And our employers have been skirting the law and skirting AB5 because their business model is theft, plain and simple. And until they are penalized in some way, and as long as they can get away with this, they're going to get away with it.

Crane: So I don't think that AB5 has hurt us, it's the implementation of it and the lack of holding these clubs accountable and holding these employers accountable, who are continuing to manipulate the legislation so that they don't have to pay payroll or taxes or workman's comp or anything like that. So there is no third way. I think that's a very confusing thing to march out and I think that it undermines what we do have. And I don't understand why the independent contractor option is appealing, I don't see why having no rights is appealing in any way for a worker.

Brian: Thank you, Ms. Crane. Any other panelists?

Nicole Moore: This is Nicole. So when I was an independent contractor for real and was consulting with multiple organizations, I set my rates based on needing to have enough money set aside to buy my own health insurance and put aside money

for, if I had bad times and all that kind of stuff. So I would say that, the benefits that platform workers need are the benefits that come with working any job under basic labor rights. So for instance, unemployment insurance, for instance workers' compensation. The situation that we're in now because of prop 22 is that we are not eligible for any of that and drivers are often hurt on the job, assaulted by passengers and we have nothing. You'll see GoFundMe set up for drivers who are injured on the job, but honestly, we need... And I also want to put to bed the whole idea of portable benefits.

Nicole Moore: Unemployment, workers comp, social security, all of that are portable benefits, right, and in addition to having employment status we have the right to form our own unions and vote for them. It is our choice whether or not to unionize and to that point, Right to Drivers United is completely independent. Our fight is for driver's rights and improvement of our work so that's what I would say about that. The other thing I wanted just wanted to point out was that the UC Riverside study was funded in whole by Uber. It was absolutely commissioned by them.

Brian: Okay. Thank you, Ms. Moore. Any other panelists?

Aquilina: And just, oh.

JoBeth: Go ahead.

Aquilina: Okay. Just wanted to also agree with the last two speakers. And I would just say what being employee doesn't guarantee you full time employment, doesn't guarantee you all the benefits in the world, but it is setting a floor for basic rights and protections. I do agree that there needs to be better enforcement, also of how it's enforced, just like with any of the laws like overtime protections, we've had to fight for it to become a reality and the workplace, but we had to establish the right first. And so having AB5 is like recognizing our basic rights to be able to find where there are violations and setting a minimum floor of protections, and some, like Nicole said, actual portable benefits that already exist in terms of social security, unemployment insurance and all of that.

Brian: Thank you. Any other comments? Let me open it up to, I'm sorry, somebody else.

JoBeth: Yeah. Just pointing out that California has better benefits than most states with, I believe three sick days, paid sick days that you have to work 52 weeks of full time work to be able to access. So part-time W2 is really what we're talking about here because most independent contractors have multiple clients. So you would be working for 10 to 12 different companies often and the systems aren't set up for that. I have a friend who works W2 for about that number of businesses and she has to lose all 12 of her work contracts and to even file for unemployment and she's always rejected. Unemployment does not come

automatically when you're a W2, especially if you work for multiple places and sick days do not apply unless you are full time for one company for 52 weeks.

JoBeth: So, it's frustrating as a journalist to see how much out in the media gets this wrong, that I think because so many journalists writing about this are full-time W2 employees, and they just assume that all W2 employees get all these benefits and it's the worst of both worlds. If you're W2, you don't have the write offs, you don't have the control over your life that you do. And as far as flexibility goes, because someone brought that up, before the pandemic, 7% of businesses in the US had any sort of flexible scheduling and that was a Friday off once a month or something. If you have a disabled child, if you have a chronic illness, if you're over 50, that's not going to do it. And so this whole notion of flexibility, yes, businesses should have and we've learned that during the pandemic.

JoBeth: But how many of these businesses are going to go back to their old ways once we're out of this pandemic? It looks like most of them will. So, that's one of the top reasons people choose to be self-employed and it's an adult decision. It's something that older workers do regularly because they've got the skills and they can make good money and they don't often need the healthcare, they've already got healthcare, they've already got retirement savings. And when you go to W2, you lose many benefits with your healthcare and your retirement benefits that you have when you're self-employed. That's why financial planners, 96% think self-employment is best for them.

Karen Anderson: I'd like to add something real quick if I could.

Brian: Yes. Go ahead.

Karen Anderson: In my group, AB5 is most certainly being enforced and it's being enforced on moms and pops and one person businesses, mostly women. And a lot of the people that I hear from who are getting audited by the EDD are in San Diego for some odd reason. And they're women, they're single owner businesses, and they're getting audited for the crime of having an independent contractor even for a day. We have people in our group who have LLCs and S Corp. An LLC and S Corp does not exempt you from AB5 and it does not protect the hiring entity from misclassification violations if they work with an independent contractor that has an LLC.

Karen Anderson: So there is just all of this nonsense going on with these audits and because the law is so convoluted and so hard to interpret that a lot of employment law attorneys are just telling small businesses stay away from independent contractors in California altogether, even if there's a bonafide exemption because these businesses in California are allowed to contract with independent contractors from out of state. So why take the risk? So Californians are being discriminated against, and they're losing legitimate work and assignments to people from other states.

Brian: Thank you very much. We have one more our committee member to ask a question. That's Jennifer Friedman.

Ms Friedman: Hi there. Thank you all for your presentations today, so this is directed to Caitlin Vega, Antonio Crane and Ms. [inaudible 01:46:33]. You mentioned a few opportunities to bring cases, or ms [inaudible 01:46:43] did, to bring cases for violations in misclassification of workers. And I'm wondering if you can just give me a sense of how many cases you've brought, and if you've found that you've had additional legal protections under AB5 to pursue these. And then as it is in regards to the stripping industry and the sex worker industry and the checking industry, if there have been similar opportunities for people qualified as employees to bring or misclassified as employees to bring legal cases or other enforcement actions to labor boards through AB5. Thank you.

Brian: Thank you. Yeah, go ahead.

Aquilina: So for cases that we've brought we've won over a \$1,000,000 and back wages for, I can't remember the exact number right now, but it's over a 100 domestic workers over the last four years. And we've got a bunch more cases in the works but they take a while to run their course. And we actually also did wage theft cases, help support worker is to file them prior to 85 even starting, about 10 years ago. And often when we came to conferences, employers would say, oh, but they're independent contractors. So if they were recognized as independent contractors, then there's no case at all for having any kind of wage claim because then they could say that, oh, well as long as they agreed to it, then it's okay.

Aquilina: But that's the thing about the wage laws is that you can't agree to lower the minimum wages and so it corrects for having that floor. So that's what we've seen and a majority of our cases are kind of these daily rates or weekly rates where we see a lot of misclassification, probably about 70% of the cases.

Brian: Thank you very much.

Crane: Yeah. Can I answer that?

Brian: Yes.

Crane: Great. Thanks for the question. So AB5 has made it possible to, we don't have to prove in a court of law that we're employees anymore, that's a given. Whereas strippers in Illinois or Indiana, they have to go through that extra hurdle to prove that their employees before they can embark on the class action lawsuit to recover stolen wages. Strippers win those lawsuits, nine out of 10. They always have since 1992 when I started stripping. But right now what they're doing is slamming strippers with forcing us into arbitration in order to even work and NDAs which make that process tense. But even through arbitration, they may even try to challenge our employee status and what they're trying to

do is to dispose of us. They want to dispose of us and undermine and manage their relationship with their workers, that's what they're trying to do. But AB5 means, hey we're employees end of discussion. And so it does give us that extra kind of speed to recover those wages.

Brian: Thank you very much for that response. We're going to now open the floor for a period of public comment. We ask speakers to 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 them 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 will turn this over to Brooke Perry who will be facilitating public comment. Brooke.

Ms Perry: Yes. And before we begin, I just wanted to make a quick note about timing. We are running behind and we have quite a few members of the public signed up to comment. So we will be staying until everybody that's signed up to comment has had their chance to comment but I do understand that you might have a hard stop at 12:30, so if that's the case you are invited to submit written testimony. And then we also have two upcoming committee meetings where we also have a public comment section and so I'll be putting that information in the chat. If you need to leave, you can always join us at two of our upcoming meetings to give your comments. So again, I'm sorry about the timing, but we will be staying until everybody's had a chance to speak today. Any committee members if you need to leave at 12:30, if you could just please message and let me know, so I can keep an eye on quorum. We need at least three committee members here to continue to enter testimony on the record. All right so with that-

Brian: Before get started, Brooke, just for our panelists too, just so you know because we're limited in time we'll be submitting additional questions to you in writing, and that will go through Brooke.

Ms Perry: Yes. And I also understand if our panelists need to leave at 12:30 as well. We'll follow up with you after that. I do want to remind all of our public commenters today to keep their comments to three minutes. We'll cut you off at three minutes and then also make sure you're only sharing your own personal perspective as Brian said and I just want to reiterate, we don't allow the public to engage with our panelists during public comments. So if they said something that you disagree with, you're welcome to express that, but make sure you're keeping it to your own opinions and perspectives. So with that, we'll go with Jennifer O'Connell, she'll be our first public commenter. Jennifer, go ahead.

Ms O'Connell: Can you hear me? Good afternoon. I am Jennifer O'Connell, I'm a writer, investigative journalist reinvention coach and E-RYT 500 yoga instructor. My concern is you have spent a good majority of panel and I wasn't in yesterday's

panel so I can't say whether that was the case, but you spent a good majority of this panel with proponents of AB5 being from domestic workers, ride share, trucking, service industries. I know for a fact, I am part of freelancers for AB5, and we compiled at least 600 professions that have been affected by AB5. Yet you've only fixated on the three, as opposed to the 597 that have been marginalized who've had incomes destroyed, businesses destroyed. I'm one of those businesses that was just marginalized and as a black investigative journalist and a black female, the work that I do is highly important and the fact that AB5 has restricted that work in the past and even with the so-called exemption of AB2257, my work is still restricted.

Ms O'Connell: Really you're creating a case system, another case system. It's just like the Jim Crow south, as far as I'm concerned in California because you're creating a second class citizenship that was not created by misclassification. It was created by AB5 for working professionals like myself who paid their taxes, who had their insurance, who negotiated their rates ably and AB5 has now tied my hands to be able to do that. For an administration in California in our nation who claims that they want to be equitable, diverse, and inclusive, this is excluding women, excluding blacks, excluding minorities, nothing about diversity in these choices being made. So why this law continues to be allowed to stand is a civil rights violation.

Ms O'Connell: I was also forced into incorporation and as Karen Anderson so ably put it, that does not guarantee me any rights or protections. What it does guarantee me is having to pay 800 plus dollars a year whether I earned that amount or not to a government, money stripped away from, again, an income that has been reduced by a quarter or a half. And even with AB2257 lifting that 35 article cap, there was some testimony yesterday I was told that claim that, oh it doesn't affect other outside entities and that outside corporations are not limiting or not restricting California writers. That is untrue. We're still being blacklisted by potential contracting entities and we're still in trouble. So of all of that to say, AB5 is not good for women, not good for minorities and not good for the African American woman as far as I'm concerned.

Ms Perry: Great, thank you. Our next speaker is going to be Onyx Black. Are you still with us? All right, then we will-

Ms Black: I'm here. Can you hear me?

Ms Perry: Oh, yes, we can hear you.

Ms Black: I'm new to Webex, so forgive me.

Ms Perry: No problem. Go ahead.

Ms Black: Okay, well thank you so much. My name is Onyx black. I represent a group called Artists for the Revolution, and I just want to start by saying, besides the

beautiful woman before me, that was the first black representation I've seen so far here today. We're talking about all of AB5, how it's either pro or con whatever you're discussing. And in that there has been tons of talk about black women, but we have been invisible. So I just want to acknowledge that I haven't seen any black representation, but all we've seen is talk about it. My group represents actual strippers, current strippers who work in the clubs right now, sex workers who are also cam models, also people who do adult entertainment, who is very upset and having devastating effects due to AB5. I represent the most marginalized. I represent black women who are strippers, I am a stripper myself. I represent transgender strippers, I represent disabled, undocumented immigrated, immigration.

Ms Black: I represent many different strippers who are very upset about this and this is before COVID, not just with COVID. Starting in January 2019, we can say about 50% of all strippers got fired from their job due to AB5. Why? Because as independent contractors, we all know the strip clubs can hire a slew of employees, oh sorry, a slew of independent contractors but as employees they can only hire a certain amount. They only can afford a certain amount of different insurances and different things like that. Because of that, I heard a question earlier about survival sex work, you bet your bottom that survival sex work is on the increase, drastically being increased, especially for people who look like me. Dark skinned, black strippers, who are no longer in these strip clubs. Because when we talk about the 50% of the strippers who got fired, it was the ones who were disabled. It was the black strippers, including me. It was the disabled ones, it was all of us, the transgender strippers, and most of us now, unfortunately are doing survival sex work.

Ms Black: I work for another organization where I actually go on the stroll to help the people who do [inaudible 01:59:14] sex work giving them aid. And you bet like I said, you want to know the real truth of where everybody is? They're on the stroll. They're not in the so-called safety of these strip clubs. People are talking about the high fees of the strip clubs. But my question is how do we even get into these strip clubs, because now nobody who looks like me is employed in these strip club? You're lucky to see one person.

Ms Perry: 30 second warning.

Ms Black: You're lucky to see somebody like me. Anyway, what we're asking for is a choice in independent contractor ship, independent contractor ship is harm reduction for us. It is not so black and white to just say that all these strip clubs are rich, some of them are small businesses and they're losing, we're losing more employment, we're losing our businesses and we are not safe. A lot of us have to also work for these pop up strip clubs, we're unsafe as well. This is called.

PART 4 OF 5 ENDS [02:00:04]

- Speaker 3: ... so work for these pop up strip clubs who are unsafe, as well. This is causing a lot of harm in the most marginalized in this community. Thank you.
- Brooke Peery : Thank you. Our next speaker will be Tonje Ettesvoll. I'm sorry, I'm sure I mispronounced that. Tonje, are you here?
- Antonia Crane: Yes, I'm here. Can you hear me?
- Brooke Peery : Yes. Go ahead.
- Antonia Crane: Thank you for having me here today. I also want to congratulate all the women here today on International Women's Day. My name is Tonje Ettesvoll. I am an Uber driver, also Lyft. I've been driving for over five years now, and I want to share the desperation of working and not having any control over your earnings. We have absolutely no control over our environment. We have no place to raise our voices, so we have no real voice on our job. Even now with gas prices going so high, we have no way of controlling and making sure we can earn money to cover that cost. I want to share two recent examples with you guys. This week, I went to pick up somebody at the emergency room and this person was mentally ill and they put this person in my car to drive to a mental institution.
- Antonia Crane: Two things are really dangerous about that. The person was very, very distressed and he should have had somebody there to care for him. But, because now people can choose us to do this kind of work, this skilled labor that should have gone into transporting this person to the facility is out the window. And for me, being in that situation, if I hadn't had dealt with people like that before and knew how to stay pretty calm, this could have been a very violent situation because of how this person acted. I got \$3, \$3 for doing this at 11:30 on Friday night. Saturday, there was a very big weekend here in San Diego. A passenger...he got charged \$85 for his ride. He was very upset and you know what I got? \$18. So, we have just absolutely no control over our earnings that doesn't make us independent.
- Antonia Crane: I also wanted to comment about the very important effects of AB5. We got unemployment because of AB5. Can you imagine during the pandemic, if these thousands and thousands of drivers wouldn't be able to have any money or any income during this situation? There was a study that people were talking about here earlier. One of the problems with this study is that it relates to engaged or active time, which is only 60% of our time. A lot of times I have to go home and I could drive an hour without getting a ride. I'm still working, but I'm not getting paid [crosstalk 02:03:01]. I'm not getting considered paid for that time. The last thing I want to say is Uber Lyft always claims that this area of work is too new to regulate. I just want to say that there's absolutely nothing new about exploiting workers. Thank you.
- Brooke Peery : Thank you. For those members of the public who are joined on the phone only and not joined online, if you press star three, that will raise your hand for us and

we'll make sure you're added to the queue. Again, that's star three on your keypad. Our next speaker is going to be Jed Bell. Jed, go ahead.

Jed Bell: Hi. Can you turn that down? Can you hear me? Okay. My name's Jed Bell. I'm over 50. I'm an independent filmmaker in Los Angeles, and I've also made my living for several decades as a freelance graphic designer. I strongly support AB5, despite being mentioned as belonging to several categories of people who supposedly don't. The law's there to protect workers and I haven't heard any persuasive arguments today against that. I've heard a lot of arguments about the ways that it's implemented being used to hurt workers. I believe that AB5 is absolutely necessary, but not sufficient to protect workers in California. So, I'll tell you how it's affected me as an independent filmmaker and as a graphic designer. As an independent filmmaker, I'm affected only in that the hardworking, young production assistants on my films now need to be paid \$150 a day minimum wage for a 10 hour day.

Jed Bell: Independent filmmakers, we might be shooting four, six, 10 days a year. We're raising thousands of dollars for that film anyway. That is more than fair and that is the only way that I have been affected on my last two films by this law. As a freelance graphic designer, we are a large workforce that was largely reclassified before AB5. So, I had made my living on 1099 and then as an employee. Here's what changed when I became acknowledged as an employee, the same thing that's happening for a lot of people under AB5. I got the same wages as before, but I was now entitled to unemployment and sick pay, which are very, very important. Also, for freelance graphic designers, as it is often a seasonal profession where we have highs and lows in our employment.

Jed Bell: There was a misstatement about sick pay in California made earlier. Just to clarify, you do not have to work 52 weeks a year to get sick pay in California. You have to work 30 hours to get each hour of sick pay. That has made a huge difference for me in taking my elderly mother to doctor's appointments, which are covered by that law. So, that's the change that it made for me as an employee, as a freelance graphic designer, as an independent filmmaker, all positive. We need AB5. AB5 needs to be implemented fairly...

Brooke Peery : 30 second warning.

Jed Bell: ...and not weaponized by employers. We need a lot more, as well. Thank you.

Brooke Peery : Thank you. Our next speaker will be Carmel Foster. Carmel. Carmel, you're muted if you're speaking right now.

Carmel Foster: Okay. Can you hear me now? Hi. Yes. My name is Carmel Foster. I was the lead worker on the gig economy, part of the panel of workers, caregivers, nannies, in-house cleaners, and the only person who testified in favor of AB5. But, I still want to understand, how is this benefiting their many immigrants, undocumented workers, who make up the majority in this industry? National

Domestic Workers Alliance and some of the panel here today worked on a vision of fairness in 2018 and this was one of the very important concerns. Again, I'm asking, how is this AB5 benefiting us when federal laws prohibits undocumented people to be hired? And, the Biden Administration is still dragging their feet on immigration reform and a path to citizenship. I feel that AB5, the very people that organized for this bill, have been actually forced to be shot in their own foot. Working as an independent contractor benefits specifically them. Help me understand. Based on that, I oppose AB5 and I retract my testimony in favor of AB5. Thank you.

Brooke Peery : Thank you. Again, for our people on the phone, that's star three if you want to be added to the queue. Our next person is going to be Mary Lee Behar. Mary, are you still here? Oh, go ahead.

Mary Lee Behar: Good afternoon. Thank you for allowing me to speak today. My name is Mary Lee Behar. I'm a California court certified interpreter in Spanish and a registered interpreter in Romanian and French. I want to thank some of the previous speakers for being a voice for freelance workers, who are freelance by need or by choice. I also want to thank the committee for taking the time to analyze the inadvertent civil rights effects of AB5. So, I'm a woman, I'm also a minority, and I'm worried about the ripple effects of AB5's passage on legislation in other states and its repercussions on the pending PRO Act. I want to make sure that my profession and the immigrant communities that we serve are protected as well. Freelance interpretation has allowed me to care for my children when they were small and it allows my colleagues, about 90% of whom are women, to be caretakers as well.

Mary Lee Behar: Freelance interpretation also allowed me to further my education. I hold a Master's in Translation and Interpretation from Bucharest, Romania, that I achieved while commuting back and forth to Romania one week a month for two years. Had I been an employee, this opportunity to further my education in the only place in the world where I could get this highly technical and language specific training, would've been impossible. Most interpreters are immigrants or children of immigrants. My colleagues and I work in a variety of settings, including healthcare, immigration, community hearings, education, and the courts to provide fair access for limited English proficiency clients. As an interpreter of a quote unquote "exotic language", a client, a court, or a hospital may only call me once or twice a year to interpret into Romanian. But, that should not force me to be an employee of that facility, nor should it mean that limited English proficiency clients do not have the right to an interpreter.

Mary Lee Behar: I personally work for more than 30 agencies and colleagues a year. Working through a third party represents about 90% of my work. When I had considered the option of employment by the courts or hospitals, the daily rate was not enough for me to pay a babysitter and parking. I was left with maybe \$20 at the end of the day, basically making it pointless to leave the house. So, employment is not an option for people like me and limiting my ability to work and make a

living by implementing this kind of law does not help the minorities that my colleagues and I serve. It doesn't help the minorities that are in this profession, either. So, thank you for your time.

Brooke Peery : 30 second warning. Oh, great. Thank you. Great timing. Our next speaker is going to be Mike Bradley. Mike, go ahead.

Mike Bradley: Good afternoon. I'm a member of the Guild Freelancers, Pacific Media Workers Guild, CWA, and a former director of the grievance and contract division National Writers Union, which also represents freelancers. My presentation today is personal, to be clear. I believe a country should protect all of its citizens against discrimination in employment. What does it say about the U.S. that it doesn't? Discrimination in principle and behavior in independent work could and should be made illegal. When seeking employment, potential clients should not be allowed to discriminate nor should we when seeking the employment. In the courts of a project, neither we nor our clients should evidence discrimination. Thirdly, independent work is controlled by the contract between the worker and the client. The contract can be breached under certain conditions. Presently, discrimination is allowable. It should be prohibited as a condition for breach. I think it's wonderful that the commission is interested in this problem and I thank you very much. Thank you, Brooke.

Brooke Peery : Thank you. Next, we'll hear from Jillian A.

Jillian A: Hi. Can you hear me?

Brooke Peery : Yes. Go ahead.

Jillian A: All right. Perfect. Hi. Thank you for giving me the opportunity to speak today. I just wanted to go ahead and second what Onyx Black had said. I am a California native who moved out of California to Pennsylvania when AB5 was implemented. I could no longer afford the cost of living in California. AB5 had made it so that I could not make a livable wage. Hiring practices became more discriminatory in strip clubs. I have seen it directly impact myself, other BIPOC women, and those belonging to the LGBTQIA+ community, undocumented immigrants, and those living with disabilities. After AB5 was implemented, I was also paying higher house fees, paying my own hourly rate, and payroll taxes. I worked longer hours and made less. I got put on slower shifts and had no longer the option for a flexible schedule. That's all I had to say and thank you for your time.

Brooke Peery : Thank you. Next, we'll hear from Naomi.

Naomi: Hi. Can you hear me?

Brooke Peery : Yes. Go ahead.

Naomi: Thanks for giving me the opportunity to speak. My name's Naomi. I am a stripper and California native who has had to move states in order to work due to AB5 negatively affecting my ability to work in California, in the following way. Nearly half of California clubs were shut down within the first six months of the passing of AB5. It's worth noting that I was in full support of AB5, initially, thinking it would allow for strippers to more easily navigate access to their rights as workers. What has happened instead is we've seen about 50% of California dancers lose their jobs since the passing of AB5, the vast majority of those dancers being black POC, undocumented, or disabled folks due to racist, homophobic, and discriminatory hiring and firing practices in strip clubs. Additionally, the support promised by community leaders in our industry who championed AB5, was simply not there and still isn't so any benefits promised by AB5 are virtually impossible to access as we do not have effective union support as promised by those community leaders.

Naomi: Because of this failure to effectively unionize under AB5, these discriminatory practices, which have always been an issue in our industry, are festering exponentially under this law. An example of this discrimination being upheld by AB5 is that dancers must now show legal ID before even auditioning, which allows managers to see your race, age, and gender before even seeing how you perform. Every dark-skinned trans or dancer aged 30 plus that I know, has been turned away from multiple auditions due to this specific requirement. I strongly request an exemption from AB5 that allows dancers to retain the choice to be an employee or independent contractor. Thank you.

Brooke Peery : Thank you. Our last online public commenter is going to be Bamm Rose, and next we'll head to our two public commenters on the phone.

Bamm Rose: It's Bamm Rose.

Brooke Peery : Bamm Rose. You want to go ahead?

Bamm Rose: Hi. Yes. My name's Bamm Rose. I'm a stripper and the founder of Stiletto's Inc. It's a pleasure activism and advocacy group for sex workers. Having worked all over this country, I've worked in many clubs where there is a choice. However, with the employment choice, the dancers are paid minimum wage and our tips are severed meaning we don't get all of our money. The most marginalized are more easily discriminated against, as employers have more control over their employees. Speaking on benefits, being a well paid independent contractor, insurance is affordable out of pocket and the insinuation that you can only get insurance and benefits from an employer is harmful. You can work for yourself and not only survive, but thrive. We should have a choice. Having worked with members of SU, I've dealt with racism misogynoir, transphobia, bullying, and other harmful behaviors, including weaponizing Instagram features to deplatform marginalized strippers and activists that don't agree with the pro AB5 sentiments of SU [inaudible 02:17:45], essentially weaponizing the law [inaudible 02:17:47] that harm marginalized people.

Bamm Rose: We should be holding clubs accountable for not abiding by labor laws, rather than harming the marginalized and changing the laws to benefit the privilege. Please stop using marginalized lives as part of your campaign, when your organization's actions do not and have not aligned with your words. AB5 is harmful to the most marginalized and beneficial to the most privileged. The answer should have a choice and the privilege shouldn't speak on behalf of the marginalized. If people want to be employees, they should have that right, but people should also have the right to have the option to opt out and their reasons vary, but they are all valid. Working within the system has never proven to benefit the marginalized, when the system itself needs to be abolished, as it is built on hierarchy. Systematic racism isn't something that picks and chooses policy, it's the entire system.

Bamm Rose: So, speaking as if AB5 won't harm people is a very privileged viewpoint. Listen to and uplift the voices of the marginalized, rather than speaking for us. We are more than capable of speaking for ourselves. This goes for any and all organizations that are doing this. If you all truly want to help us, listen to us. Put us in positions to speak for ourselves. Put us in positions to advocate for ourselves. It's eerie having people discussing us like we're some incapable beings, kind of like having an all male panel speaking on abortion. We don't need saviors. We need positions. We need liberation. Marginalized people are people, not props per privileged agendas. With that being said, thank you to the folks on this panel that use their privilege today, to speak up for the marginalized in a way that reflects the truth and how this will impact us negatively. Your allyship is greatly appreciated. To those using us as a prop to push for policy that will further harm us, shame on you. That's all I have to say. Thank you.

Brooke Peery : Thank you. Now, we'll move towards our call-in users that have indicated they want to make a comment. If you want to unmute yourself on your keypad and then also press star six, we should be able to hear from you then. If you just want to go ahead, we'll hear from you one at a time. Sorry, there's no way to distinguish you. We are not hearing anything.

Pamela Fitz Law...: Hello. Can you hear me?

Brooke Peery : Yes. Go ahead.

Pamela Fitz Law...: Hello?

Brooke Peery : Yes. Please, go ahead.

Pamela Fitz Law...: My name is Pamela Fitz Lawrence. I am a certified medical interpreter. My language is Spanish. I lived outside the country for 35 years, so besides growing up in San Luis Obispo, California, that's what gave me my Spanish abilities. Then, of course, I'm certified so I have tested positively in all for being an interpreter. I've been working as an interpreter since 2009. So, it's not a very long time, but

this AB5 is affecting me, in that I have had to increase my expenses for myself, such as getting licenses that before I did not have, insurance that I had to have more complete than previously. I know that I work with people who are also marginalized. I work with the LEPs of people who have limited English proficiency and need our services. I would like to say that, please be fixed to prevent sign language interpreters and language interpreters and translators so that we can continue being of the best ability to be able to...I'm sorry, I'm nervous...to be able to serve in our positions.

Pamela Fitz Law...: It needs to be that the version of the PRO Act passed by the U.S. House were to become law. It's section 101B, as currently written, would have the effect of rendering most professional interpreters unable to function. That is what I wanted to tell you. Please make it so that we can continue working on our own, independently, as we have done. I also have been a caregiver for my parents, sometimes for my husband, and so that for me to be able to choose my own hours is also very beneficial. I have to say, I love what I do. My patients are appreciative of me and they love our country, and I hope that we can continue to all be our best. Thank you so much for letting me speak. Pamela Fitz Lawrence, Santa Rosa, California. Thank you.

Brooke Peery : Thank you, Pamela. Now, let's hear from our second phone-in speaker. Do you want to go ahead?

Kim Kavin: Yes. Can you hear me?

Brooke Peery : Yes, we can hear you. Go ahead.

Kim Kavin: Hello. My name is Kim Kavin. I was a staff editor for newspapers and magazines for about a decade before I decided to go full-time freelance as a writer and editor in 2003. I'm one of the older Americans that your panel was talking about. I'm getting ready to turn 50 years old, in a couple of months. If the U.S. Commission on Civil Rights wants to truly understand the effect that AB5 has had, you need to make it clear in your report that it unleashed a cascade of events that has now united hundreds of thousands of independent contractors nationwide in an effort to stop it from spreading. This nationwide grassroots resistance began in late 2019, about two months after Governor Newsom signed AB5. That's when quite a few of us had to band together to stop our... I'm sorry. Can you still hear me?

Brooke Peery : Yes. You cut out for a second, but we can hear you now.

Kim Kavin: Yeah. The system cut me off. What I was saying was that this nationwide grassroots resistance began in late 2019 about two months after Governor Newsom signed AB5. That's when quite a few of us had to band together to stop our home state of New Jersey from passing an AB5 copycat law. We didn't want to lose our careers and clients the way writers like us were suffering out in California. It was women who founded that grassroots effort and almost entirely

women who packed the New Jersey State House to demand that our lawmakers do the opposite of what lawmakers in California had done. That was a little more than two years ago. Today, we're a nationwide group. We're called Fight for Freelancers and we have people in all kinds of professions, including members from California. We are 80% women, Democrats, Republicans, Progressives, Independents, all of us united to stop this California mess from becoming a nightmare for the rest of us, through federal legislation and regulations.

Kim Kavin: Just last month, we answered the National Labor Relation Board's request for Amicus brief, about what standard it should use to determine independent contractor status. We didn't even know how to pronounce Amicus brief, but we figured out how to write and file one, specifically to say, "Do not use California's AB5 test." In a matter of weeks, we managed to get co-signers, whose groups represent more than a quarter million independent factors across the country. That's how frightened and angry independent contractors are everywhere in this nation about the threat of California's AB5 spreading. We're preparing now to file a similar brief supporting ASJA's petition to have the U.S. Supreme Court hear its case against AB5.

Kim Kavin: We just started seeking co-sponsors on Friday. We already have way more than we did last time. Others are now falling around asking to join, too. The lawmakers who pushed for AB5 said it would help grow unions. It did not lead to the formation of a single one. Its actual effect, to create an enormous nationwide grassroots movement led by self-employed women filled with a huge percentage of women that is fighting to stop it from spreading nationwide. AB5 is seen as a horrible, tragic, cautionary tale and members of the U.S. Commission on Civil Rights need to understand that none of us see these anti-freelancer laws as protecting us. We see them as attacking our livelihoods and we are going to keep fighting. We are not going anywhere.

Brooke Peery : All right, that's your time, Kim. Can you let me know what organization you are with? I missed that.

Kim Kavin: We're called Fight for Freelancers.

Brooke Peery : Fight for Freelancers. Okay. Thank you. And with that, that concludes our public comment. Brian, if you want to go ahead and close this out.

Brian: I want to thank all the panelists and members of the public for attending today. The transcript and other materials will be available within 30 days following the meeting. If you provide 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. If anyone would like to submit written comment, please send this by email to Brooke Perry at B-P-E-E -R-Y @ U-S-C-C-R.gov. We

will have another panel discussion sometime in April, 22. So, if you give us your email, we'll be able to let you know when that panel discussion will take place. Again, I want to thank all the panelists and the members of the public for your input today. It's very valuable to this committee. So with that, we will go ahead and close the meeting and adjourn for today. Thank you all.

PART 5 OF 5 ENDS [02:28:41]