

Brian Moriguchi: Okay, good afternoon, everyone. We will be starting our California Advisory Committee to the U.S. Commission on Civil Rights meeting. I want to welcome everyone from the public, as well as our panelists for joining us today.

Brian Moriguchi: 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, and I am the chair of the committee.

Brian Moriguchi: Members of the committee present here today, if I miss somebody, please speak up. Clare Pastore, Rogelio Ruiz, Maimon Schwarzschild, Rachel Sigman, Christopher Yost ... And let me just see ... Did I miss anybody?

Star Parker: Star Parker is also-

Brian Moriguchi: I'm sorry. Star Parker, you're here?

Darrell Hunter: Hey, this is Daniel Ortner. I didn't hear you say my name, but you might have said it. I apologize.

Brian Moriguchi: Okay, Daniel Ortner. And was that Star Parker?

Star Parker: Yes.

Brian Moriguchi: Okay. Anybody else?

Jennifer Friedm...: Jennifer Friedmann is also here.

Brian Moriguchi: Jennifer Friedmann. Thank you.

Speaker 4: [inaudible 00:01:39]

Brian Moriguchi: Okay. So the [inaudible 00:01:44]-

Chanee Franklin...: Chanee Franklin is here. Chanee Franklin Minor. I'm not sure if you got that.

Brian Moriguchi: Chanee, thank you. So the ones I show missing are Javier Gonzalez, Gunnar Gundersen, and Darrell Hunter.

Gunnar Gunderse...: I'm here.

Brian Moriguchi: Hello? Who is this? Was that Darrell? Hello?

Gunnar Gunderse...: This is Gunnar Gundersen. I'm joining by phone today. [inaudible 00:02:18]

Brian Moriguchi: Okay. Thanks, Gunnar. Darrell Hunter, Velma Montoya, Alison Dundes Renteln. Okay, we have a quorum present. I will go ahead and proceed with the meeting.

- Brian Moriguchi: Also present are commission staff: Brooke Peery, civil rights analyst; Angelica Trevino, support specialist; and Eunnie Hur, 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 in the administration of justice.
- Brian Moriguchi: In each of the 50 states, the District of Columbia and all U.S. territories, an advisory committee to the commission has been established. They are 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 related to AB5, and the potential impacts of AB5 on minority groups, such as women and people of color within the state.
- Brian Moriguchi: 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 perspectives and opinions.
- Brian Moriguchi: 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 will be able to indicate with your keypad when we reach that point in the agenda, if you would like to make a comment. We also do have an ASL interpreter with us today as well.
- Brian Moriguchi: At the outset, I want to remind everyone present of the ground rules. This is a public meeting, open to the media and the general public. I want to remind everyone that this meeting will be transcribed from a recording for the public record.
- Brian Moriguchi: I ask that you please state your name when speaking. Panelists should limit their initial remarks to around eight minutes. After all the panelists have spoken, advisory committee members will have an opportunity to ask questions.
- Brian Moriguchi: In addition, written statements may be submitted to Brooke Peery at bpeery@usccr.gov. Written statements should be submitted by July 15.
- Brian Moriguchi: Though some of the statements made today might be controversial, we want to ensure that all invited guests feel welcome, and do not defame or degrade any person or any organization. As the chair of today's meeting, I reserve the privilege to cut short any statements that defame, degrade, or do not pertain to the issue at hand.

- Brian Moriguchi: 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. Alternately, such persons or organizations can file written statements for inclusion in the proceedings.
- Brian Moriguchi: I urge all persons making presentations to be judicious in their statements. The advisory committee appreciates the willingness of all participants to share their views and experiences with this committee.
- Brian Moriguchi: 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.
- Brian Moriguchi: We have with us today Mr. Thomas Sheehy from the Sheehy Strategic Group; city attorney David Chiu of San Francisco City Attorney's Office; Assemblyman Kevin Kiley, California's Sixth Assembly District; and Ms. Lorena Gonzalez, chief officer, California Labor Federation.
- Brian Moriguchi: We will go ahead and start with Mr. Sheehy. We will go ahead and start with your presentation; the floor is yours.
- Tom Sheehy: Great. Hey, thank you very much for the opportunity to participate today. So just very, very quickly for those of you listening and that don't know me or didn't see the bio, I'm Tom Sheehy.
- Tom Sheehy: I spent about 20 years on the inside of state government, 10 years as staff in the California Legislature and 10 years in the executive branch of government, where I was a governor's appointee three times over.
- Tom Sheehy: I got out of government work in the last 15 years. I've spent doing mostly consulting, government affairs work, and lobbying, primarily in the State of California, but also in several other Western states.
- Tom Sheehy: My first contact directly working on AB5 happened in the late spring of 2019, when Assemblywoman Gonzalez was moving AB5 through the California Legislature. I was contacted by a large tutoring company that had operations in about a dozen Western states.
- Tom Sheehy: And the concern they explained to me was that by far, the bulk of their tutors were independent contractors. And under the provision of AB5, they all have to be made employees.
- Tom Sheehy: Now, these tutors were almost a hundred percent moonlighters. They were schoolteachers that were moonlighting, other industry professionals that were moonlighting. Then there were also college students who were trying to make an extra 200 or 300 bucks a month in order to pay their cost getting through higher education.

Tom Sheehy: None of our independent contractors were really relying upon tutoring as a sole source of income, so we didn't really think this was the target that AB5 was shooting at.

Tom Sheehy: What was at stake here. I think that's important to remember, really had to do with low-income families in California having access to these type of academic services and tutoring.

Tom Sheehy: By that, what I mean is my client told me, he said, "Tom," he said, "look," he said, "if they don't make any adjustments in the legislation, we can continue to operate. But we're going to have to raise our fees 30 to 40%." That's what he told me.

Tom Sheehy: And he said, "If I do that, looking at the demographics of our customers," he said, "about half of them will be able to continue to work with us because they are in the more affluent demographic of California."

Tom Sheehy: But he said, "About half of our customers who are mostly middle class and lower middle class from an economic standpoint, they're not going to be able to afford it. And essentially then what we're going to end up with is a two-tiered system where wealthy families get tutors to help their children excel in school, and less fortunate families don't."

Tom Sheehy: We were very, very concerned about that. And I will tell you that working with Assemblywoman Gonzalez and the Legislature on this issue, we were successful in getting some adjustments. And we really appreciated that.

Tom Sheehy: My next experience with this issue came a year later in 2020, when Assemblywoman Gonzalez carried legislation AB2257, which was a cleanup measure of the aforementioned AB5.

Tom Sheehy: I think Ms. Gonzalez had stated publicly, and most folks understood, that there needed to be some additional adjustments. That it's awfully hard to do legislation this big and this sweeping and get everything right on the very first attempt. So this was an opportunity to address some of the issues that really still needed to be addressed in the labor code.

Tom Sheehy: My client at that time was an association called the Language Access Professionals Association. And they were made up of real-time captioners and sign language interpreters, whose job it was, was to help deaf and hard of hearing people be able to function normally in today's society, by having interpreters.

Tom Sheehy: Like the tutors that I'd helped the year before, the sign language interpreters and real-time captioners in LAPA, or the Language Access Professionals Association, as I said, they were mostly independent contractors, overwhelmingly female and fiercely independent.

- Tom Sheehy: The reason why their work was suited to independent contractor work is because of the extreme randomness and chaotic nature of the work assignments, very unusual hours, and unpredictability when folks were going to be needed.
- Tom Sheehy: And women and females were especially depending upon schedule flexibility, because they're trying to juggle the multiple needs of raising a family and earning a living at the same time.
- Tom Sheehy: Furthermore, the American with Disabilities Act, which of course was a 1990 act, it provides that the deaf and hard of hearing are entitled to the same access to public services as the general population. Now public institutions and agencies must accommodate the deaf and hard of hearing population in order to make sure that they can work effectively with them.
- Tom Sheehy: LAPA needed further amendments to AB5 in order to allow them to continue operating their business model as they had for decades before, and to work that model primarily as independent contractors.
- Tom Sheehy: The risk was is that if AB5 forced all of their people into W-2 employment models, there could be a shakeout of the providers in the deaf and hard of hearing community. And they would in fact go without the interpreters that they needed to function in their daily lives.
- Tom Sheehy: Fortunately, we were successful again, working with Ms. Gonzalez and her staff in getting amendments into AB2257 in order to address some of those needs that could have impacted a very vulnerable population.
- Tom Sheehy: So my experience overall working with the Legislature in general, and Ms. Gonzalez in particular, on AB5 and AB2257 was generally positive. I found the author to be receptive to the issues I was bringing to the table, and her staff collaborated with me. And in the case of AB2257, we were able to get multiple amendments in to address the referral agency of this labor code.
- Tom Sheehy: Now we really appreciated that opportunity, and we hope that these amendments will be satisfactory when we look to the future at possible EDD audits and potential litigation. And that really brings me towards the end of my comments. That has to do with enforcement.
- Tom Sheehy: If administrative agencies are overzealous, like EDD and others are overzealous in enforcing employee classification regulations, then what we thought we had achieved by working with the author of AB5 and the Legislature will disappear in a puff of smoke. It'll be meaningless. This is a huge risk.
- Tom Sheehy: I have clients who have suffered frivolous audit findings and other administrative litigation at the hands of EDD, mostly concerning the Borello test.

I know firsthand through my clients how overbearing this agency, the EDD, can be.

Tom Sheehy: The risk here is that we put small and medium-sized businesses out of business. Small companies simply cannot afford hundreds of thousands of dollars in administrative litigation costs, driven by overzealous executive auditors and driven by frivolous litigation. Believe me, that is going on out there in California. And it's a real concern.

Tom Sheehy: Finally, what I'd like to say is, again, while working with Ms. Gonzalez and the Legislature in 2019 and 2020 was generally a positive experience, I feel like the door to further improvements in this area of the law has been shut: at least for the time being.

Tom Sheehy: I had some direct meetings with the California Labor Federation at the end of last year, because there are additional fixes and issues that need to be made in the law in order to help small and medium-sized businesses serve their customers in important issues here in California.

Tom Sheehy: And the sense that I have, at least until I'm shown otherwise, is that that door's completely closed. And there's no appetite to fix some of the existing problems that are still there. And these are problems really that need to be fixed in the code. They're not regulatory issues that can be fixed by DDD through a regulatory process, in my opinion.

Tom Sheehy: So I hope that when Ms. Gonzalez and your colleagues ascend to the top leadership of the Labor Federation, that they'll have a fair and open mind in working with advocates like me and my clients. Because there are legitimate issues in the law, in the code that still need to be modified in minor ways. Living within the spirit of AB5, but allowing small and medium-sized businesses to be able to function successfully in California. Because after all, that's what we want. We want people to be served, and we want people to be able to make a decent living.

Tom Sheehy: Again, thank you very much. These concludes my comments, and I look forward to the question and answer period afterwards.

Speaker 1: Brian, you're muted right now.

Brian Moriguchi: Sorry about that. Thank you, Mr. Sheehy. We'll go through all the panelists, then we'll do questions at the end from committee members and then public comments. So thank you very much.

Brian Moriguchi: Our next speaker is city attorney David Chiu. Mr. Chiu, you have the floor.

David Chiu: Thank you Mr. Chair, and good afternoon committee members. I appreciate the opportunity to provide testimony on the civil rights implications of the current State of California law regarding gig workers.

David Chiu: While I am a former civil rights attorney and a former state legislator, today I testify as a city attorney for San Francisco. Our San Francisco City Attorney's Office has been deeply engaged in matters addressing violations of protections for gig workers.

David Chiu: A few years ago in 2020, our office brought a misclassification lawsuit against Uber and Lyft on behalf of the people of the State of California, alongside our co-counsel, the California Attorney General's Office and the city attorneys of San Diego and Los Angeles.

David Chiu: In our AB5 enforcement action, we sought and obtained a preliminary injunction from the court to require Uber and Lyft to follow the law when it came to how their drivers were treated.

David Chiu: The companies appealed the court's ruling, but the order was upheld because we had demonstrated the broad harms to the public, drivers, and families from not receiving benefits and protections they were guaranteed under the law.

David Chiu: Unfortunately, shortly thereafter, Lyft and Uber went to the ballot box to pass Proposition 22, which has stymied the promise of AB5 for these drivers.

David Chiu: I'm going to focus my remarks today on the troubling impacts of Prop 22, which was a carveout from AB5 for app-based drivers.

David Chiu: The companies that sponsored Prop 22 spent over \$200 million, including paying drivers for their support and suggesting that flexibility and employee status are mutually exclusive under the law, which is not true.

David Chiu: The result has been hundreds of thousands of vulnerable workers that were on the cusp of receiving AB5 protections who lost those protections.

David Chiu: I also mentioned that after Prop 22 passed, a lawsuit was brought to challenge it. My office representing the City and County of San Francisco; again, we joined Oakland and Los Angeles and authoring an amicus brief in support of the lawsuit.

David Chiu: A trial court struck down Prop 22 for violating our State Constitution, in a case that is still pending. This testimony draws on some of what our cities have said in that brief, as well as more recent research about Prop 22 in practice.

David Chiu: Our jurisdiction's experiences have shown that when workers, especially low-wage workers and people of color, receive robust employment protections, our communities are stronger.

David Chiu: Conversely, when workers are improperly classified as independent contractors and receive far fewer protections, working families struggle, our economies are weaker, and our cities must step into the breach to provide support.

David Chiu: At the heart of these matters is the denial of employment protections that are well established under California state and local law: including minimum wage, healthcare, overtime, reimbursement for meal and rest periods, sick leave, unemployment insurance, disability insurance, and workers compensation.

David Chiu: The harms to workers resulting from the denial of these safeguards are not mere abstractions. They represent real and immediate harms to working families. These harms are irreparable, both to workers and to society at large.

David Chiu: The California Supreme Court has recognized this, and I quote: "The public will often be left to assume the responsibility for the ill effects to workers and their families resulting from substandard wages, or unhealthy and unsafe working conditions."

David Chiu: Our local jurisdictions have been harmed in many ways when workers do not receive the protections to which they're entitled. At the highest levels, when companies misclassify workers, those savings push larger costs onto workers, their families, and government services.

David Chiu: One prominent study estimates that companies avoid up to 30% of payroll benefits, tax costs, and other expenses by classifying workers as independent contractors, which leave those workers and taxpayers to foot the bill.

David Chiu: Unfortunately, Prop 22 doubled down on an already-precarious situation for drivers and society. Before Prop 22, one study showed that Uber drivers earn less money than 90% of all other wage and salary workers. This ballot measure, unfortunately, has exacerbated this wage gap, which impacts over 750,000 app-based drivers in our state alone.

David Chiu: Prop 22 purported to provide a wage of at least \$15 and 60 cents per hour, including a healthcare stipend plus an hourly amount equal to at least 120% of the state minimum wage. But unfortunately, this promise fails to materialize in reality. The purported wage rate and benefits are only based on the time a driver is actively providing a ride or delivery for a single platform.

David Chiu: UC Berkeley researchers estimate that with deductions for unpaid waiting times, unreimbursed expenses, and payroll taxes, the true wage for app-based drivers could be as low as \$5 and 64 cents per hour.

David Chiu: Moreover, very few drivers receive reimbursement for healthcare costs. A survey found that only 10% of drivers polled receive a healthcare stipend. And many drivers are so low income that they're covered by Medi-Cal, making them ineligible for the Prop 22 stipend.

- David Chiu: Even if drivers accrue sufficient time with a single company, the healthcare reimbursement has been difficult to access. Companies often fail to provide meaningful notice to drivers about it. 40% of drivers in that same survey do not recall being notified about stipends, with large differences across racial and ethnic groups.
- David Chiu: Latinx drivers in particular are least likely to know about the stipends. About half of all Latinx drivers don't recall receiving any notification or aren't sure.
- David Chiu: Prep 22 has maintained a harmful status quo: really, the continuation of the lack of protection for workers that we saw with the misclassification of workers prior to the California Supreme Court's decision in Dynamex and AB5.
- David Chiu: Misclassification harms not only drivers and their families, but residents and public services within our jurisdictions. When these workers do not receive full wages, they bring home less money to their families than legal regimes otherwise entitle them, with many impacts on our community.
- David Chiu: Let me talk first about the impact on health. Studies report ride-hail drivers are prone to a wide range of medical issues, as a result of sitting many hours in a car.
- David Chiu: These drivers report muscular skeletal disorders, chronic pain in their backs and knees, headaches, fatigue, dehydration, not to mention the mental toll of the job, which often leads to anxiety and depression.
- David Chiu: When these workers are wrongfully treated as independent contractors, they do not receive robust healthcare or workers compensation. They forgo necessary medical treatment that could prevent more serious hospitalizations.
- David Chiu: These consequences are particularly impactful for cities like mine that have to fund and operate expensive public safety net hospitals, mental health programs, and health clinics.
- David Chiu: Let's talk about housing. The work [inaudible 00:23:09] that workers experience from misclassification ripple into the housing crisis. When denied full wages, workers miss rent payments. They're one paycheck away from eviction and homelessness, forcing cities and counties to fund a wide range of housing programs, including monies for rent relief, homeless shelters, transitional housing, and permanent supportive housing.
- David Chiu: Let's talk about food insecurity. For families struggling to afford life's necessities, a difference in take-home wages means the difference between visiting a food pantry or not. In California, these drivers all too often rely on food pantries and food banks. A study of Los Angeles ride-hail drivers revealed that one in five are using food stamps or some other similar public benefit.

David Chiu: And let's talk about the impact on families. When denied paid family leave benefits, these workers are forced to continue working instead of taking time they would have otherwise received to bond with and care for newborn children.

David Chiu: In conclusion, the information that we've seen thus far about how Proposition 22 works in practice, along with what we know about how misclassification has harmed workers and society broadly, supports how critical AB5 is to protecting the rights of low-wage workers across California. The majority of whom are women, immigrants, and people of color.

David Chiu: And with that, I look forward to the discussion today. Thank you very much.

Brian Moriguchi: Thank you very much, Mr. Chiu. Next up we have Assemblyman Kevin ... Mr. Kiley, are you with us?

Speaker 2: [inaudible 00:24:54]

Brian Moriguchi: Mr. Kiley?

Speaker 2: Okay, I [inaudible 00:24:59]

Speaker 1: Brian, I don't think he's with us yet, if you want to go ahead and go to Ms. Gonzalez.

Speaker 2: [inaudible 00:25:05]

Brian Moriguchi: Okay. Let's go to Ms. Lorena Gonzalez. Ms. Gonzalez?

Speaker 3: Oh, no.

Speaker 1: I think there's somebody who needs to mute their phone.

Brian Moriguchi: Everybody on, if you can mute your phones? I did want to, for the record, acknowledge that Alison Renteln and Velma Montoya are with us as well, the two committee members I did mention earlier. Ms. Gonzalez, the floor is yours.

Lorena Gonzalez: Thank you. I'll start by reminding folks who don't know, I actually authored AB5. And although I left the Legislature in January and am set to take over the State Federation of Labor come July ... I'm not currently the executive officer, but look forward to serving in that role.

Lorena Gonzalez: Before I came to Legislature, just by way of background, so people understand why this was so important to me, is I was a worker's rights advocate. I worked for organized labor for a majority of my life. I was an organizer. I dealt with misclassification in a very real way. A lot of times in drives to get either union

elections, or even just to get people paid what they deserved. You see a litany of misclassified workers.

Lorena Gonzalez: So it's something that I knew about personally, but not something that I had seen discussed a whole lot until we got into the Legislature. And some things came about.

Lorena Gonzalez: I'm going to start by discussing a little bit about why the misclassification has serious implications for workers' civil and labor rights, and how they're linked. Then I'm going to go into a little history of how we got to AB5 and basically, why we got there.

Lorena Gonzalez: Stopping misclassification isn't solely about gaining economic justice. It's also about gaining racial justice, because civil rights and labor rights are linked. We know that.

Lorena Gonzalez: When bad employers purposely take advantage of workers from marginalized, low-income communities by misclassifying them, they're stripping critical anti-discrimination and wage protections from workers who need it the most.

Lorena Gonzalez: Employees are legally protected against discrimination on the basis of race and skin color, national origin, religion and creed, their age, their gender identity and sexual orientation, and any disabilities and medical conditions.

Lorena Gonzalez: They're protected against losing their job due to pregnancy, at least in California, or for taking time off for that pregnancy. When they're retaliated against after exercising their civil and labor rights in the workplace, they're protected. They're also protected on the right to receive equal pay for equal work.

Lorena Gonzalez: There's an enormous financial incentive for employers to misclassify their workers and ease the burden, I suppose, and the burden on the employer themselves from legal justifications, from wage justifications. And they did so for decades under a previous test called Borello.

Lorena Gonzalez: But California's at the forefront and the national leader in strengthening workers' rights. We also are the state with the most diverse working population. So there's a special need to ensure that diverse workers in the state, often immigrant workers as well, are equally protected.

Lorena Gonzalez: Worker misclassification is really a threat to society's social contract, and designed to dismantle our country's framework of regulating what happens in the workplace.

Lorena Gonzalez: About a hundred years ago, a little less, President Roosevelt really redefined how we provided our social safety net, basically, in the United States. He codified the social contract between society, employers, and workers.

- Lorena Gonzalez: Think about things like Social Security and SSI and Medicare, unemployment insurance, workers compensation, sick leave. All these were started under the New Deal, and they were assigned to work. Basically, as an employee, you would start to get these benefits. Some of which, by the way, are mobile benefits.
- Lorena Gonzalez: We talk a lot about now like, "Oh, my benefits should go from workplace to workplace." Well, Social Security was the first benefit that did just that. The employer has a responsibility, and the employee has a responsibility to pay into that. The payroll taxes were done, obviously, through work and through both the employer and the employee.
- Lorena Gonzalez: A few decades later, the civil rights movement. We determined that civil rights weren't just the ballot box. They weren't just the courts. But they were at work, too. And that you had rights against employment discrimination.
- Lorena Gonzalez: Once again, they were set in on an employment basis, not on a contractor basis. And it wasn't something that could be exercised by small businesses against other small businesses, as much as it could be from an employee against a bad employer. These were all things that were set to protect those who are the most vulnerable in society, and make our society basically work.
- Lorena Gonzalez: You know, when you look at what has happened with misclassification, it really has been targeted at women and people of color. Misclassification is rampant in low-wage, labor-intensive industries, where women and people of color are overrepresented.
- Lorena Gonzalez: The amount of annual wages lost to minimum wage violations that happen through misclassification cost workers of color \$4 billion a year. Minimum wage violations increase poverty rates among all workers who experienced wage theft by 22.9% here in California.
- Lorena Gonzalez: According to Economic Policy Institute, 21.2% of Latino workers suffer minimum wage violations. And 21.4% of black workers suffer minimum wage violations. This is a very common theme in many different types of work. Not just the gig economy, although we've seen it on steroids in the gig economy, it's something that's been happening for a very long time.
- Lorena Gonzalez: Then if you look at empirical analysis of anti-discrimination lawsuits filed by misclassified workers, the cases filed in federal courts between 2005 and 2014; these are Title VII employment discrimination, included a misclassification claim; more than 17% were filed by retail workers and drivers, which we currently see continued misclassification.
- Lorena Gonzalez: Only 32% of those that were filed were filed by blue-collar workers, while more than 67% were filed by white-collar workers. So this does affect all groups. However, the access to justice is disproportionate.

Lorena Gonzalez: The study concluded that misclassification is undermining the protections offered by anti-discrimination laws, by removing workers from the statute's reach who are very targets of the laws. Leaving low-income women and workers of color largely without a meaningful access to justice, because of how cost-prohibitive and lengthy litigation is.

Lorena Gonzalez: According to the U.S. Census Bureau, among the occupations where 10% or more of the workers were misclassified, seven of those occupations are disproportionately held by women and workers of color.

Lorena Gonzalez: So we knew it was a problem.

PART 1 OF 6 ENDS [00:32:04]

Lorena Gonzalez: ... By women and workers of Color. So, we knew it was a problem. It has always been a problem, but in California, it's very important to understand how we got to where we were. So, in 1989, the courts decided, the way they would determine whether somebody was an employee or an independent contractor, was this test called the Borello test. And a lot of people stare lovingly at the past Borello test, but I think for decades, both employers and employees had problems with it.

Lorena Gonzalez: And one of the reasons why is because it was an 11-point test, and it had weighted factors, and it was never quite clear which factor the courts would look at in order to determine who was misclassified and who was an employee. The other thing about the Borello test, it put the onus on the employee to prove that they were misclassified.

Lorena Gonzalez: So, the employer who had the most information to be able to provide whether somebody was an employee or an independent contractor, was let off the hook until the employee could prove that they were misclassified. Now, when the employee, of course, is somebody who is poor, working class, has less access to justice, has less access to the courts, has less ability to prove something with an attorney, then, of course, they're less likely to be able to do so.

Lorena Gonzalez: It also took a really long time to get through the courts. So, what we saw was that this just became a long road for employees to even present their cases that they were misclassified. Well, in 2005, there was a case filed. It was called the Dynamex case, our Dynamics is actually ... We all call it Dynamex, but the real pronunciation was Dynamics. And it was about delivery drivers.

Lorena Gonzalez: And these delivery drivers are working for this company. Basically, there's not a lot of difference between them and anyone who works for a company like a UPS driver, except that they were being classified as independent contractors. And while the courts upheld that they were actually classified wrong, they were misclassified, it took 13 years to go through the process.

- Lorena Gonzalez: So, finally, in 2018, 13 years later, you can imagine how much changes in 13 years, these workers, the California Supreme Court, in a unanimous bipartisan decision, said, "Absolutely, this is ridiculous." It was only a wage in hour claim. So, it only pertained to that portion of the labor code. However, the justices said, "This is clear and it's clear, and it's clear that Borello's the broken. This does not work for workers." Now, this is a court who at different levels have seen misclassification lawsuits forever.
- Lorena Gonzalez: So, in April 2018, they decided, "Hey, we're gonna do this a little bit different now. We're gonna say the presumption is on the employer. In other words, we're gonna presume if you're doing the work of the company, you are an employee, because the employers are better able to challenge the employee independent contractor status, and that we're going to have a clear ABC test. The ABC test will decide," and I'm sure you've heard about the ABC test, "Whether or not somebody is an employee."
- Lorena Gonzalez: Now, the great thing about Dynamex is it gave a lot of clarity, but under Dynamex, a lot of people could argue that everybody, even some small businesses who were truly small businesses could be defined as an employee. And there was massive concern. So, folks like the former panelist, Mr. [Shihi 00:35:49], the Chamber of Commerce, all these folks in the Capitol started freaking out and saying, "We need to change this. This doesn't make sense."
- Lorena Gonzalez: And there were certain examples that they could give. And they were examples where individuals were truly working as small businesses, but were being 1099 as independent contractors, even though that they were a small business with a business-to-business relationship. The concern was that all of this would have to go through litigation at each point. So, on the one hand, as a former worker advocate, I was really excited about Dynamex.
- Lorena Gonzalez: It's an opportunity to clean up what had happened for years and years for workers, where they were at the disadvantage to really prove that they were misclassified, that was clear of misclassification, even under Borello. But at the same time a lot of people were scared about this new decision and what it meant. So, we took on what became quite a feat in trying to clarify what that should mean under California law. And we did it in a way that we knew wouldn't make every employee happy and it wouldn't make every employer happy. It wasn't enacted to do so.
- Lorena Gonzalez: It was enacted to clarify so that people could continue in relationships where individuals were truly businesses, operating as such as an independent contractor. That is the whole basis for being an independent contractor is you are an actual business versus people who are just being misclassified, who are truly employees. So, we started that process, and we did a couple things.
- Lorena Gonzalez: The number one thing we did was look back at the code in California. So, there were decades, basically, of codes written inside our code. Don't forget, Borello

was not part of the labor code. We're talking about things in the labor code where it had been debated by the Legislature, signed by a governor, or wage orders that were adhered to that said whether people were independent contractors or employees or they weren't eligible for unemployment insurance, things like that.

Lorena Gonzalez: So, we took all of those out to try to match up with current law those people who could already justify, point to something that had been done, had been debated, and were continuing through and there weren't a lot of problems. A lot of lawsuits, a lot of misclassification suits through EDD. Then, we also said, it's important that you can actually pass Borello. We looked at the old Borello test.

Lorena Gonzalez: And Borello was a lot about control, how much control somebody had over their contractor or employee, depending if they were misclassified or not. So, those were the first two things we looked at when we looked at how do we create a statute by which, or codifying what the Supreme Court said, and we're still making it achievable for people of all races, of all genders, to operate a true small business.

Lorena Gonzalez: And that we'd ask, can the business model be distinguished from what Dynamex did? Well, that's one of the reasons the gig companies were never, in fact, exempted in any way from current labor law, because they can't. Does the industry have widespread misclassification, significant claims by workers alleging wage theft or other workforce abuses? If people came to us and suggested, "Oh, well, we've been operating this way," we looked at what the law actually said. Were there actual preponderance of lawsuits out there that showed otherwise, that they couldn't even pass Borello?

Lorena Gonzalez: Do individuals operate in their field with a level of autonomy and bargaining power in the workplace? We looked at the reasoning in Dynamex, and we tried to look at what the Supreme Court justices said in the reasoning, things about why they're doing this, why they're making such a drastic change. And it had to do with the leverage that now some independent contractors lacked.

Lorena Gonzalez: They lacked the leverage because there are a number of factors that they looked at. Does somebody need a higher educational level to do the job? Does somebody need a state license in order to do the job? Is it something with lower skills or less ability to negotiate and bargain? Do they actually bargain their own rates? Is this a situation where independent contractor is acting like a small business where they tell the business, "This is how much I charge," and that's a negotiation.

Lorena Gonzalez: So, we tried to look at all of those things, and bring them in not just by employment, but also by a business-to-business exemption. So, in-

- Brian Moriguchi: Ms. Gonzalez, we are running out of time. So, if you can conclude your statements?
- Lorena Gonzalez: Okay, I'm sorry, your staff said we have 15 minutes since you haven't had a full explanation, but I'd be happy to make it shorter. So, we did a business-to-business exemption. We continued to work on that to ensure that small businesses could operate, but they had to abide by the law. Both the businesses that were operating together had to abide by the law. Do you have a business license? Are you an actual business? Can you contract with other folks? Are you able to set your own rates, set your own time? Do you have a place of business outside of the major business, even if it's your home?
- Lorena Gonzalez: So, we'd set standards in law that, yes, are complicated. Not as complicated as Borello was, but that allowed for businesses to be able to contract with one another when truly small one-person, two-person businesses are actually doing the work of a small business in contracting with another business. I'll end it there.
- Brian Moriguchi: Thank you, Ms. Gonzalez. Our next speaker is not available right now. He is in the Capitol, working. So, we'll have to wait to see if he is able to take some time out of his schedule. So, we're going to go right into opening the discussion to the committee members to present questions for our panelists. I will address each committee member in roll call style so that each member will have the opportunity to ask at least one question and a follow-up.
- Brian Moriguchi: Please wait for your name to be called before asking a question. If time allows, additional questions may be permitted. And of course we can submit written questions as well. 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.
- Brian Moriguchi: It's a little difficult for me to tell those who are on the phone. So, if you have a question or a comment, as I go through the list, you could just speak up. I'm talking to the committee members. So, let me start with Jennifer Friedmann. Do you have any questions for the panelists?
- Jennifer Friedm...: Brian, could you return to me a bit later? Thank you.
- Brian Moriguchi: Of course. Let me start with a question. Mr. Chiu, I know you mentioned about the many benefits, employee versus independent contractor. And we have heard testimony from independent contractors who talk about the benefits of being an independent contractor, whether that's the flexibility of schedule, their ability to work around their home life, that they wouldn't be able to get through other employment, or their age, their tool to get hired by some companies, all these arguments.

- Brian Moriguchi: And this is really open to all the panelists. Is there some solution that would work to marry the two issues together where either independent contractors still have some level of protection, or that employees have some greater flexibility than what they have now? Is there any hybrid or any even legislative solution?
- David Chiu: Well, I think ultimately, Legislature can decide whether there's a possibility of a hybrid solution here. I think what we are saying from our office is, from our perspective, these workers are employees. And if you are going to be denying them the equivalent of, say, 30% of their salary and other protections, that has consequences.
- David Chiu: And not only do we think that they are violating current laws as it stands, but it has significant consequences for our local jurisdictions when it comes to what we need to then spend from public coffers and through taxpayers to pay for healthcare, to pay for housing, to pay for a wide variety of social services that then have to step into the breach. So, that's really the point that I was hoping to make with some of my comments.
- Brian Moriguchi: Thank you. Any other panelists?
- Lorena Gonzalez: I'd be happy to answer that question because we got asked it a lot. And the truth is this. AB five allows independent contractors to continue to operate as independent contractors under the law. What was happening prior to AB5 is an unawareness about what the law said. So, you had a ton of misclassified workers under Borello who didn't have the rights to pursue, basically, because they didn't have access to justice. So, there were workers who had been misclassified for a long time. That's dangerous for our entire system that we've all agreed upon.
- Lorena Gonzalez: So, we have preserved the right of independent contractors to act at small businesses, and still protected workers. When you talk about age, that's an interesting one that keeps being brought up. What about age? The truth is, age discrimination, the protections against it are only for employees and not for independent contractors. So, in fact, when you start to accept that there's discrimination and you don't enforce that anti-discrimination laws, and instead say, "Well, they should simply go over and operate without these protections," that's dangerous.
- Lorena Gonzalez: It's dangerous not only for those workers, but for society as a whole. We have decided that there is employment classification as a way to provide these benefits, to provide access, to work without discrimination. And by taking them out of the system actually provides them with no recourse and no changes. So, for a large part, there were a lot of people who asked, for example, "Well, what if we just allowed people to decide? What if they could just decide, 'I want to be a 1099 employee, I want to be a W2?'"

Lorena Gonzalez: And the problem with that is, we don't allow labor laws to be determined that way. We have rules. And there might be some people on this call who don't believe this, but we as a society has decided we have rules. We don't allow people to say, "I'm willing to work for less than minimum wage because I want this job," because then the people who are the most marginalized, who are the most desperate, who are in the most need of protections, will be forced to work in a way with none.

Lorena Gonzalez: And we've seen that happen with immigrant populations in particular, we've seen it happen with underground economy, and we can't codify that into law and allow employers to simply say, "Oh, if someone chooses to be an independent contractor, it'll save me 30%. So, I'm only going to hire independent contractors." So that's the tug and pull we saw with this legislation and why we think this is the balance. This is an ability to allow independent contractors to continue to operate, if they operate as a business, but yet to enforce labor laws, as we have decided as a society, this social compact exists.

Tom Sheehy: And I want to weigh in just on that point. I think there's no doubt that there were and have been serious abuses of employee classification in California. So, the premise for AB5 was a totally valid premise. And I think that Ms. Gonzalez and her colleagues in the Legislature did their best to address this issue, with a lot of abuses.

Tom Sheehy: It's also true that in casting the legislation the way they did, and the way that the labor code has been written both in '85 and in subsequent so-called cleanup legislation, that there are still, in some cases, niche industries, with certain types of workers working there that have been drawn into a classification system as a W2 employee, that just simply doesn't work for them. And it's my hope as an advocate and somebody who's done a fair amount of work in this area, that we will continue to have an open mind and that the legislature will look at some of these issues and address them.

Tom Sheehy: The thing that was good about Borello that I haven't heard anybody say so far, is that it looked at these matters on a case by case basis, that the Dynamex decision and the ABC tests treats everybody the same. It's a one size fits all. So, these differences in what those laws were and what they are, have caused some problems that still need to be addressed. But I think the important thing to understand is, we needed to have reform in this area, and AB5 did a lot of good, but there are still some issues with this law that need to be addressed and fixed to make sure that everybody that wants to work in California and be successful, has an opportunity to do so.

Brian Moriguchi: Thank you very much. We do have Assemblyman Kiley with us now. So, we're going to go back to the presentations, and then we'll go back to the questions after Assemblyman Kiley. Assemblyman Kiley, you have the floor.

- Kevin Kiley: All right. Thank you very much. I really appreciate the chance to share a few words about my experience in California as a member of the legislature fighting against AB5, and then having to deal with and witness the ramifications of it for many people in our state. It would be really difficult, I think, in the history, at least the recent history, of our country to find a state law that has had a more regressive impact than this one has.
- Kevin Kiley: Predictably, from the very beginning, it has cost countless people in our state their livelihood. It is deepened the poverty and inequality that is endemic to modern California. It's decimated whole industries, and it's severely hampered our state's response to COVID-19. And this is not just the assessment of me, a Republican member of our legislature. I'll give you some quotes from some other folks.
- Kevin Kiley: The former Deputy Chief of Staff for Governor Newsom, [Yushara 00:51:01] Lee, called it one of the most destructive pieces of legislation in the past 20 years. He said it's truly horrific how many people have been negatively affected by it. Willie Brown, former speaker of the assembly and mayor of San Francisco said it made him want to picket against the special interest that took advantage of the legislature. Andrew Cuomo said that he rejected a similar law in New York, said we don't want to make the same mistake as California.
- Kevin Kiley: The Liberal Daily Kos warned other states, don't make the same mistake California's Gavin Newsom did, calling AB5 disastrous and asinine, and its supporters shameful. The NAACP called it a terrible law and a gut punch to our community. The CEO of The Black Chamber of Commerce called it a catastrophe responsible for enabling defending and propagating systemic racism. 200 PhD economists, including a Nobel laureate, reported the law is doing substantial and avoidable harm to the very people who now have the fewest resources and the worst alternatives available to them.
- Kevin Kiley: So, this is a law that really cuts across the usual political boundaries in that, as we began to see the ramifications from it, it was actually an incredibly diverse group of people from all walks of life who had now had their, and in some cases, everything that they'd worked for and their entire lives, taken away. And when this just started in January and February 2020, I have it right here, we compiled a book of AB5 stories with people saying how the law had impacted them and how much devastation it's done to their ability to earn a living and to care for their families, and so forth.
- Kevin Kiley: And I gave a copy of this to every member of our Legislature. I've also given a copy to every member of the United States Senate after the passage of the Pro Act in Congress. I'll give you just a few examples. This is from a woman named Michelle. "I'm a nail technician, renting space in a tiny salon in Chico. I'm a Camp Fire survivor who lost my home in my hometown, and lost my husband to cancer. I'm my sole [inaudible 00:53:11] on this bill that put me out of business."

Kevin Kiley: Andy, "I work with underserved artists of Color. None of my career as an artist, technician, designer and producer, would've been possible under AB5. Artists of Color will be less able to create their own work in a field that doesn't favor them." John, "I'm a guest orchestral conductor. Because of this bill, I just lost my first scheduled job with an orchestra. \$9,000 that would've put a dent in my student loans or helped pay in my insurance or paid for food and shelter is now gone, all because of AB5."

Kevin Kiley: Esther, "I help people who don't speak English, communicate with medical providers. I'm a proud senior, independent, and self-sufficient. AB5 leaves me out of work, unprotected, and isolated. It takes away my pride. It was passed without taking people like me into account." Sylvia, "I'm the director of a small nonprofit opera. We've scrambled to comply with AB5, but it'll cost \$10,000. Our nonprofit doesn't have this, so I'll pay. We can't sustain this, and will likely go dark. I founded the company 20 years ago. So, this breaks my heart."

Kevin Kiley: Jody, "I worked years to gain my skills as an American sign language interpreter. It was my goal since I was nine years old. After AB5, I lost all three of my agencies. The dream I worked for is lost. I can't provide for my family, and thousands of California debt won't be serviced." Eddie, "I am disabled and unhireable for a regular job. Yet, as an independent contractor specializing in unique things, I have been able to work and survive in LA since 1983. AB5 has me very, very worried. I literally have no clue how much longer I can survive."

Kevin Kiley: Megan, "I am a nurse practitioner. AB5 is widening the gap in healthcare as small rural practices can only be staffed by contractors shut their doors. Setting my own schedule has allowed me to spend time with my children, but I will no longer be able to." Gene, "I've been a tech writer in the medical device community for 15 years for Bay Area companies. I can't afford to live in the Bay Area, so I live on the Central Coast. I'm now unemployed, thanks to AB5. It's devastating. I have no idea how I'll be able to stay afloat."

Kevin Kiley: Connie ... I could go on at some length. This will be the last one. "Problem standing and walking limit my ability to find employment. I choose to work as an independent contractor because it suits my life best. Now, my online teaching company stopped working with California teachers. AB5 is taking away my choices in livelihood, and I might lose everything."

Kevin Kiley: So, this is what we saw immediately after the law went into effect. We counted 100s and 100s and 100s of professions that were negatively impacted or were no longer even able to work at all in California. Many national companies started disclaiming on their applications that they could no longer hire California freelancers.

Kevin Kiley: And to make matters worse, which really gives the lie to the entire premise of this bill, baked into it from the very beginning was a whole litany of exceptions and exemptions. I think it's up to well over a 100 by now because there were

some that were subsequently put in place. And the dynamic that existed from the very beginning is that those who had resources, those who had political power, those who had lobbyists, were able to get themselves shielded from the worst impacts of the bill, whereas those who did not have that power, were crushed by it and had no ability to fight back.

Kevin Kiley: And that is the dynamic that we've continued to see. To make matters even worse, we had then had, shortly after the law went to effect, the COVID shutdown and the shutdown of our entire economy, and it was precisely many types of independent contracting forms of work that you were still able to do, even when there was a statewide lockdown going on. So, this double whammy was even more devastating.

Kevin Kiley: And we called upon the governor and Legislature to at least suspend the implementation of AB5 when COVID began, especially since it was hindering a lot of healthcare workers like nurse anesthetists, nurse practitioners, medical interpreters, and so forth. Nevertheless, even though there were 100s of laws suspended by the governor under the COVID 19 State of Emergency, this was not one of them.

Kevin Kiley: To the contrary, those in control of the levers of power in California used COVID as a way to hammer in AB5 and to exacerbate the law's inequitable effects. When independent contractors became eligible for unemployment relief under the Federal Cares Act, the State withheld all those funds and tried to shoehorn our independent contractors into the regular unemployment system where they'd be forced to name the names of their business partners, which then our EDD could then use as the basis to go and do harassing audits to enforce AB5 and impose fines and penalties, and so forth.

Kevin Kiley: A final point is that I have tried on many occasions to get this law overturned. I've introduced legislation to repeal a AB5, and not once has my bill even been heard. So, you have a very clear picture of a process that bears resemblance to a lot of laws that have had inequitable impacts and violated civil rights in the past, where you have those in power who are implementing a law that has grossly inequitable impacts, and then using their power to shut down the democratic and representative process in a way that enables those effects to at least be mitigated or to be reversed.

Kevin Kiley: So, I appreciate the investigation that the commission here is doing. I think it remains vitally important that California reverse AB5. Oh, and one other point I should add is that, in many ways, this law just took a lot of problems that already existed in California to a whole nother level.

Kevin Kiley: So, even before AB5 went into effect, California already had the most onerous restrictions on the right to earn a living. This was found by a study by the Institute of Justice that we had the most onerous and broad limits on occupational requirements of occupational licensing. And it's one of many

reasons that California has the highest rate of real poverty in the country. That has been exacerbated by AB5.

Kevin Kiley: It's also a reason why people are leaving this state in higher numbers than ever before, also something that AB5 has contributed to. So, I unfortunately don't have a lot of time to stick around because we are in session right now, but I'm going to, in my time in the Legislature, continue to fight to reverse the law here. And I would strongly advocate against putting anything that even gives it a toehold in federal law into place. Thank you.

Brian Moriguchi: Thank you, Mr. Kiley. If it's possible, I know you're going to have to leave, can we get a copy of your AB5 stories that-

Kevin Kiley: Yes, absolutely. I have it posted online. In fact, while I'm here, I'll just give you the link.

Brian Moriguchi: Yeah, that's fine.

Kevin Kiley: And I'll put it in the messages there, if that works.

Brian Moriguchi: Also, you mentioned that you have proposed legislation, but that hasn't gone through. Does it have a bill number?

Kevin Kiley: Yeah. I've proposed it multiple times, so there're multiple numbers at this point.

Brian Moriguchi: Okay. If you could provide us with it, just so we can look at it.

Kevin Kiley: What's that? Yeah, I can-

Brian Moriguchi: If you could provide us with the bill number so we can look at those bills?

Kevin Kiley: Yeah, of course. And not only has the bill not gone through, but they've refused to give it a hearing. So, this book was compiled in January 2020, right after the law into effect. I also have another link that I can give you. We didn't do a physical book with this one, but we collected additional stories, 100s more, after the COVID shutdowns began, where folks provided their testimony as to how suspending AB5 would've helped them get through the COVID shutdowns better.

Brian Moriguchi: Okay, great. Thank you, Mr. Kiley. Let's return back to the question-

Daniel Ortner: Brian. Brain.

Brian Moriguchi: Yes.

- Daniel Ortner: Mr. Kiley also had mentioned a study by 200 PhD economists, and then some statements by the NAACP and other organizations. Could we get those from Mr. Kiley as well?
- Kevin Kiley: Yeah, I will have that all compiled and give them to you.
- Brian Moriguchi: Okay, great. Thank you very much, Mr. Kiley. So, let's go back to the committee members to ask questions. Gunner Gunderson, do you have any questions?
- Gunner Gunderso...: Not at the moment. I found all the presentations very informative though. Thank you.
- Brian Moriguchi: Thank you. Let me go back to Jennifer Friedmann.
- Jennifer Friedm...: Sure. So, my question is about the protections available as an employee that are not available as a contractor. And I think I'd love some help from any panelist, trying to separate some of the predictive effects of AB5, such as those that might be compiled in this book right after it was passed from the impacts later on. So, how do you all think about categories like AB5 is bad for women, and balancing that with lack of paid family leave available for contractors, or the lack of wage protections leading to extremely low wages? How do you navigate, especially for those who have critiqued the bill, navigate those absence of protections? Thank you.
- Lorena Gonzalez: I don't have a critique of the bill, but I'd be happy to provide you. I have to be honest, as a former government official, and this is a government body, a semi-government body, it's amazing to me that somebody could read, and you guys are going to introduce into the record, anecdotal evidence of people's stories that are anonymous. If you'd like that, we can provide you with thousands and thousands of folks who don't like to go with their full name or provide testimony because they've been misclassified and the direct result of what that's had on their life.
- Lorena Gonzalez: But that's not usually how these hearings go. So, that book, if you will, was compiled. And I just was hearing some first name basis of people who said that they were discriminated against. I'm going to point out one, because I've heard it twice in the examples. An orchestra. Okay. This is really interesting because it's not anything that AB5 did. You could never actually perform in an orchestra under Borello and be considered an independent contractor.
- Lorena Gonzalez: And I'll tell you why. Everything about an orchestra performance is directed by somebody. You're told when to go, how to show up, what to do, what music to play, how long to play, what you're wearing. That is, by function of its job, an employee. So, the ...

PART 2 OF 6 ENDS [01:04:04]

Lorena Gonzalez: ... by function of its job, an employee. So the fact that somebody was previously an independent contractor as an orchestra musician, suggested they were being misclassified, and we actually know that's true because what we did is we pulled all the data from EDD, people who had filed unemployment claims, a worker comp claims, previously before Dynamex. And the arts in general was one of those areas where it was astronomical, because it didn't become a problem.

Lorena Gonzalez: People actually filed with agencies when there was a problem, when they became unemployed, or when they needed worker's comp because they got hurt in the job, but those go missing if you're an independent contractor. Now, what we've tried to provide is the actual stats about misclassification based on actual reports that have been done. And we're happy to enter all of those in. But a lot of what was said, I guess right after the passing, was based on all this fear that was drummed up by employers, by Uber, by a number of foundations, some of which sit on this board, in order to get people to oppose this law and see if they could create such a political scandal that we'd have to pull it back.

Lorena Gonzalez: In reality, everything that Mr. Kylie did or other people did to say let's suspend AB5 or pull it back, would've just meant that Dynamex was in place. Dynamex, the Supreme Court ruling was much stricter in AB5 because it didn't go through the analysis of each type of job. It didn't allow for a business to business exemption, if you will, allow for businesses to contract with one another, the stuff we put specifically into AB5.

Lorena Gonzalez: And so there's a lot of political theater going on, but I hope that in this arena and as we promote anything to the national commission, that we're actually basing things on fact and not political theater and stories and fear mongering. So thank you for the question, but basically, that's what we've been trying to take a fact based approach, a numeric based approach, and not one just based on feelings or former misclassifications that were just never addressed.

Brian: Thank you. Okay, Daniel.

Daniel: Thank you. My question is for Ms. Gonzalez and also Mr. Chiu as well, if you feel inclined to answer this, but especially for Ms. Gonzalez. I was struck just now by your comment saying that we should disregard the anecdotes of these. I think very real people that we've heard from that have been harmed by this law. And I noticed you were laughing, demeanor maybe when you were listening to these stories that Mr. Kylie presented. And I have to say I'm very ... was disappointed by that.

Daniel: I'd like to ask you in light of all of these stories, and we've heard many stories, not just today, but others in previous meetings, industries that have been particular targeted, what you say in response to the unintended consequences of AB5. These people that have lost jobs, that have lost opportunities, what do you offer to them and why do you believe that the benefits have outweighed the potential harms or negative impact to these individuals?

Lorena Gonzalez: So first of all, I want to be clear. I was not laughing at anyone's stories. And I would never laugh at an individual stories. In fact, we took meetings with hundreds, if not thousands of individuals and groups of individuals to try to clarify and go through AB5 in its true effect on people. What I'm disappointed in is that, and anecdotal evidence is fine. However, when you're just putting together a book, I could make you a book right now and we all know this is true, right? It's not a legal basis.

Lorena Gonzalez: I could make you a book with every worker I've ever spoken to. And I guarantee you, there will be more than he just talked through, who've been misclassified, but that's not how we make these decisions in legal decisions and law decisions. I'm concerned about this hearing and putting a hearing in a place, for example, sir, the Pacific Legal Foundation that you work for, you're in court trying to undo AB5. So, there's a clear conflict that hasn't been disclosed.

Lorena Gonzalez: My conflict, if you will, conflict, I work for organized labor, that's disclosed. But we need to make sure that while we're presenting information and actually coming to some conclusions, that we're working with facts. Some of the facts about people who were hurt by AB5, or felt like they were hurt or had what they thought was an economic opportunity displaced, was because it was illegal to start with. So it wasn't AB5. It was that people became aware that there were misclassification laws.

Lorena Gonzalez: Some of the other issues. And that's a problem. That's a problem because we've allowed this to go so far that people have been misclassified for years, if not decades, without the government stepping in and saying, "We need to better figure this out." Everybody thought Borello was broken. I don't think there's anyone who said Borello worked fine. Now some people say that, but at the time, we never codified it into statute because of that, because it was so wishy washy. And it really relies on an employee's access to justice to do anything about being misclassified.

Lorena Gonzalez: And that puts the employee the most vulnerable in the relationship with the employer in a bad position, in a position of having to come up with resources to challenge their employment status. What we did is upend that. Is that going to make some changes? Yes. Is it going to take some time to settle in? It will. However, we continue to work towards ensuring that employers employ people who are their employees. And that a small business, an individual who can still work as a sole proprietor, if they're working under the law as one, can still continue to operate.

Lorena Gonzalez: We allowed for that. We continue to allow for that as we should to allow an entrepreneurship to flourish in a way that is good for all of society. True small businesses that operate in a way that give leverage and power to the business owner is the way our law should be written. I mean, if you disagree with that, that's fine. But stats show that the misclassification of workers as independent contractors have cost the workers, they've cost society, they've cost the

taxpayers, and the only people that they haven't cost is the businesses that have gotten rich off of utilizing them.

Brian: Thank you very much. Chanee Franklin Minor, do you have any questions?

Brooke: Hi, Brian. This is Brooke. Chanee had to leave after all of the opening remarks, but she asked me to ask a question on her behalf.

Brian: Okay, go ahead.

Brooke: So this is to anybody who would like to answer, but she wanted to know, was there an equity analysis before AB5 was adopted? And specifically, do the legislators know how black Americans engage in the gig economy and how they've been affected by AB5?

Brian: Any response?

Lorena Gonzalez: I am going to say this. There are countless studies about the cost of misclassification that led to AB5. And we're happy to forward all of those. This has been an ongoing issue, not just for years, but for decades. Don't forget Borello, in 1989, was decided in a way to try to clean this up, but it didn't do its job. And we continue to see how misclassification workers continue to cost those workers and society. And those who are the most vulnerable, of course, end up paying the most.

Lorena Gonzalez: And let's talk about who independent contractors are, because I think this is really important. According to report from the California Policy Lab and the UC Berkeley Labor Center, which I'm happy to forward, only 5% of independent contractors even make over \$77,000 a year. That's a small minority to say the least. 72% of independent contractors make less than \$20,000 a year. These are individuals who are only working as independent contractors who were previously misclassified and who we are working towards getting classified.

Lorena Gonzalez: So if you look at just the generation of wealth disparities, we see them. We see them in every report that was ever generated. And we saw that quite frankly that people of color, both black and brown, were the most affected by misclassification. And if we're talking about, not just the economic power, which is important, but the civil rights power, I can give you anecdotal evidence every day. But I worked with taxi drivers before going into legislature. And taxi drivers are historically independent contractors. I'd argue some misclassified.

Lorena Gonzalez: And what we saw was even taxi drivers, at least in San Diego where I reside in City Heights, are primarily black immigrants. So they are overwhelmingly from African countries and are African American in that sense, right? And they would face racial discrimination constantly by people, their clients. We see the same thing in Uber and Lyft. And unlike a normal situation with an employer where people come in, they say racial, sexual, gender based insults, you have some

sort of recourse as an employee. We're seeing the studies now on Uber and Lyft as well, at most, or through an independent contractor like a cab company.

Lorena Gonzalez: The most that would happen is, if you're lucky, Uber and Lyft, for example, will not match that person with you anymore. It doesn't prevent the next driver who's in a similar situation from also being harassed by that client, because there's no responsibility by the master company, if you will, in providing or taking away that type of harassment. So these are the type of real issues that we saw, and I'd be happy to forward all the reports that deal with these to you. And there are plentiful.

Brian: Okay. Yeah, that would be great, Ms. Gonzalez. Appreciate that.

David Chiu: I think one other thing I will just mention on this topic is, if you're talking about the difference between how an independent contractor versus an employee is compensated, when that employee receives the benefits that the law are supposed to afford, the protections that the law is supposed to afford, the differential between how that employees addresses the challenges that they face in life versus what the independent contractor is facing when it comes to healthcare disparities, which are exacerbated for communities of color, when it comes to housing disparities, when it comes to disparities between white Californians and people of color, when it comes to food and security, every single dimension of vulnerability that are faced by individuals when their rights are not protected, spell out in many, many ways when it comes to civil rights inequities and differentials, when it comes to how black, Latinx, and other communities of color are dealing with the social impact of misclassification.

David Chiu: So, I think it's important not just to look at what the discussion as this was being debated, but what the discussion is today, when you have folks who are barely able to subsist in many of our communities around California with regards to all of these issues.

Brian: Thank you. I know for the committee, it's difficult for us to gather any type of solid data about misclassification and other things. So anything that either of you could provide us, specifically as it relates to some of the discrimination issues that we're looking at, would be greatly appreciated. So thank you guys. Let me go to Velma Montoya. Do you have any questions?

Velma Montoya: No, I don't, but I have found this very instructive. Thank you.

Brian: Okay. Thank you, Velma. Star Parker.

Star Parker: Yes. Thank you. And I find it very informative as well. I'm wondering, a lot of discussion has been on the misclassification going back to revisiting a law of AB9, but in the 21st century, many more people are preferring to work in the gig environment, independent contractor environment, including people of color. So I'm wondering, do those that are sounding a little frustrated in this process of

us doing this investigation, do you think that we should look at it? Do you want to know, or should we as a committee know if there is a disparate impact on those civil rights protected groups, since many are choosing to not work for the employer, but to stay in their own business?

Star Parker: And then second, to the legislature from San Francisco, if he's mentioning all of the social impact of things that city has to take up because people are choosing to be independent contractors more often than wanting them to be an employee, should we be looking at other types of services that make it much more equitable for those independent contractors to take care of those other details like most of our small businesses do? Paying their own social security taxes, getting insurance for their healthcare, et cetera.

David Chiu: Well, maybe I'll jump into the part of the question that was directed toward me. So, the reality is these, we're not talking about workers who are choosing this independent contractor status. They're being told by companies, multibillion dollar companies, "You are going to be denied a whole variety of protections under California law because of how we are misclassifying you." These are workers that would prefer to receive a real living wage, prefer to receive healthcare, prefer to receive childcare benefits, etcetera, et cetera, but because of how these companies have chosen to classify you, you're impacted that way.

David Chiu: And what that means is those costs, those burdens have to be paid for by someone. And so these are companies that are shifting billions of dollars of those costs onto, frankly, government and societies. So taxpayers have to do it, have to pay for it while these companies have benefited through billions of dollars of monies that they otherwise would be required to pay.

Brian: Thank you. Go ahead, Ms. Gonzalez.

Lorena Gonzalez: I do want to point out too because there is a misconception. 81.7% of all employees are W-2 employees. There isn't this massive movement to independent contractors. 8.6% function completely as independent contractors and 9.7% have some kind of mix. And they weren't outlawed. What we said is that if you are treated as an independent contractor, forced to do things like pay all of your social security, pay for your healthcare, pay for all of those benefits, create your own account so that you can have paid sick days and paid family leave. If you're required to do all that, then you must be functioning as a small business.

Lorena Gonzalez: That's what AB5 said. It didn't stop independent contractors from being able to function. It said, "Hey, you got to have a business license. You got to be able to negotiate your own rates." The problem with the gig economy, which is a little separate, is it is so far beyond having any autonomy as a small business. And so many of these workers have been told inappropriately, that the only way to have flexibility on the job, the only way to have that second job is through

keeping it at an independent contractor. In fact, there is nothing in California law that doesn't allow an employer to provide flexibility.

Lorena Gonzalez: Studies show that workers do have flexibility. Those with a union contract, we often have inflexible workplaces because workers don't have a voice on the job. That's a separate conversation, but that's not prohibited in any way. You can work for multiple employers, both as an independent contractor today under AB5 and as an employee. But the vast majority of workers in California are choosing to work as employees that they provide, if you look at every study of, especially of marginalized communities, of communities of color, they want those benefits that are provided as an employee.

Lorena Gonzalez: Those who are in the gig economy or in a situation where they're being forced to be an independent contractor, are often doing so because they need some sort of flexibility and they're told that's the only way to do it, or because they need a job and they don't understand their rights as a worker in California.

Brian: Okay. Thank you very much. Clare Pastore.

Clare Pastore: Thank you. And thank you to the speakers for the presentations today. One of the things that has been frustrating to me as a committee member about this topic is that it feels like it's quite difficult to focus it on the civil rights implications that are within our jurisdiction. In some ways, this feels like it's an economic argument about, whether one is pro or anti-regulation, it's an argument about how one feels about the economy in general and the so-called burdens of being an employer and paying for things that, as Ms. Gonzalez pointed out, are part of the social contract.

Clare Pastore: And lots of things that are very interesting, they're well worth discussion, but I don't believe they're part of the jurisdiction of this committee. So I wonder for example, Mr. Sheehy, if you could talk to us about the civil rights implications of some of the issues that you raised. I appreciated, you had a more nuanced take on this than some speakers that we've heard at our hearings generally. We tend to hear folks who think AB5 is the devil's work or AB5 is the panacea for everything. And I appreciate your more nuanced take.

Clare Pastore: But even within that, some sectors of the economy, some industries, showed that they were independent contractors, they got an exemption. Well, that's interesting as a matter of economic policy, or workers policy, but is there some civil rights implication to that? And when we have asked prior speakers about civil rights implications, we tend to hear things like lots of women want to be independent contractors because they have care responsibilities for family members and being an independent contractor allows them that flexibility.

Clare Pastore: And we've heard again and again, that there is nothing in the law that prevents employees from having flexibility if they're able to negotiate for that with their employers or the employer is willing to provide it. So, I am personally frustrated

by hearing lots of women want flexibility, and therefore this is a civil rights issue because as I understand it, nothing in AB5 prevents that kind of flexibility other than perhaps the lack of power that workers have vis-a-vis employers.

Clare Pastore: But I wonder if we could hear from Mr. Sheehy a little bit about the civil rights implications, if any, that you see. And I'd also be very interested in hearing from Mr. Chiu, as you have been bringing cases. I presume you have been bringing cases to enforce the requirements of AB5, and I'm quite interested in whether you are seeing any patterns that relate to civil rights in the cases that come to you or that you're bringing. Are you seeing what Ms. Gonzalez has been talking about a predominance of workers of color among those misclassified, or are you focusing on misclassification at the low end of the economic spectrum where we know that workers of color predominate?

Clare Pastore: So, I know that's a lot of things, but I'm really asking primarily two things, about the civil rights implications, both from your perspective, Mr. Sheehy, and from your experience, Mr. Chiu. And I welcome ... I think Mr. Kylie has gone. I would really love to ask that question to him, but I think he's gone and he's not [inaudible 01:24:09]. And Ms. Gonzalez, I welcome anything you might add, but I think you've been clear on the civil rights implications of misclassification and the attempt of AB5 to address those.

Tom Sheehy: Okay. Well, hey Clare, thank you very much for that. And thank you for acknowledging that I'm avoiding some of the hyperbole that certain people bring to this issue. Look, it's an important issue. And our society has cut in many different ways. And there's some folks that feel really stridently about it in one way and some in the other, I just don't think a lot of hyperbole is helpful when you're trying to have a meaningful discussion. So I'm going to do my darn best to continue to avoid that.

Tom Sheehy: On this issue, I'll get to the civil rights thing specifically, but on this issue of employees have flexibility, they've just got to work it out with their employer. I think that is sometimes true, and I think it certainly sounds nice. And if I was a proponent of a certain persuasion, I would certainly use that argument.

Tom Sheehy: I could tell you as somebody that watches every single bill and every single amendment that comes through the California Legislature every single year, okay, there have been countless attempts to try to give employers more flexibility in working with their employees. And those attempts are shot down left and right, left and right, left and right, and left and right. Okay.

Tom Sheehy: Now I'm not casting any aspersions at any people or political parties. I'm just saying that's a fact. The most current example I could point to, to be specific with you is, there was legislation that was just killed in the state capital five days ago. Actually it was about a week. It was maybe 10 days ago. I failed the policy deadline because the labor committee hearing this bill refused to set it. This is a bill that would've given employees and employers the right to have a 10 hour a

day, four day work week, still 40 hours, where the employer wouldn't have to pay overtime on hours nine and 10, like they normally do now.

Tom Sheehy: In other words, keep the 40 hour work week, but for those employees that wanted to, could work it out with their employer to do four tens instead of five eights. For countless thousands of men and women in this state, that would be really, really good for them. But the political reality in California is that legislation can't get through. Okay. Now, that's just one example. There are many other.

Tom Sheehy: So let's just remember when we talk about it being [inaudible 01:26:43] easy or possible to work things out between employees and employers, it's not always the case. Okay. It's just not. Now I don't want to paint things in a broad brush, and I don't want anybody else to paint things in a broad brush. As I said in my earlier remarks, there's no question, but that there were many abuses taking place in our economy with independent contractors who should have been accruing and receiving the benefits of employment. No question about it.

Tom Sheehy: The problem, look, I don't know what you'll say today. And I have great respect for the author of AB5, but even she realized when she passed that bill, that there were a bunch of problems that created. And that's why she came back a year later with cleanup legislation in order to address a number of those issues. So, I think that there's a lot of good that was done by AB5, but there was damage by it too. Not everything Mr. Kylie says is simply bomb throwing, as some might say.

Tom Sheehy: I mean, he's raising some legitimate issues. And there were still people in the California economy that did in fact get hurt as a result of some of these law changes. Look, I think that most people that want to work should be able to work as an employee and receive all of those protections of benefits, but there are certain situations, mostly in more niche industries and more niche occupations, where that's not necessarily the case. And I would hope that the majority in this state won't just simply run over the minority of folks that want to have that opportunity.

Tom Sheehy: Look, as far as civil rights go, I'm not a lawyer. All I can do is tell you what my experience has been. When I work with sign language interpreters and real-time captioners, and the aforementioned language Access Professionals Association, the stakes there were high. You've got hundreds of thousands of deaf people in the State of California, deaf and hard in hearing, that are relying upon sign language interpreters and real-time captioners every single day of their life in order to do simple things like banking, filing for social security benefits, attending institutions of higher education and so on.

Tom Sheehy: And the Americans with Disabilities Act was passed in this country in 1990 in order to make sure that those people's rights weren't trampled upon. AB5, when it first passed, was a direct threat to that system of support here in

California, for historical reason. They didn't target it. They weren't trying to do it. I know Ms. Gonzalez didn't want to do it. In fact, she helped me and my client address some of those issues. And as I said, we're very grateful for it. But I just point to that as an example. That was an important issue that we had to address and we had to fix.

Tom Sheehy: My concern is, again, as I said, is that when we start looking at the enforcement side of the equation, and EDD starts coming in with some of their audits, our concern is that some of the safe harbors that Ms. Gonzalez wrote into her legislation, both AB5, as well as the cleanup legislation, may not be viewed and acted upon the way that she and her colleagues might have hoped that they would. My clients are very, very concerned at the prospect of overzealous enforcement and overzealous regulators, because they've been on the perceiving end of it before under the Borello test. And they're concerned that it could be even worse under the ABC test.

Tom Sheehy: So, I think it still remains to be seen how well some of these provisions that are written into the labor code will actually work. And I guess that just women's rights and single mothers, maybe that's not defined as a civil rights issue, but a lot of the providers in this case are women and they gravitate to this profession because they can work independently free, of the controls of a W-2 employment situation. And they're doing it because they've got young kids and families to take care of.

Tom Sheehy: In some cases, they're single mothers, and this is the type of employment that works for them. And their assignments may come without a moment's notice with a telephone call in the middle of the night, at two o'clock in the morning. If one of their death clients has to go to the emergency room and they've got to go with them because they've got to explain to the doctor what's going on. Okay. Those types of things don't lend themselves to employer W-2 type employment situations. Okay. So, I understand that most folks-

Clare Pastore: Can I just ask a quick question? [inaudible 01:31:07].

Tom Sheehy: Most folks are better off as W-2 employees, but not everyone. And let's just not throw everyone out.

Clare Pastore: Can I ask just a quick question about that particular kind of example. Are the people that you're thinking of, the sign language interpreters, do they set their own rates typically?

Tom Sheehy: Yes.

Clare Pastore: Because we've heard on different sides of interpreters or translators. Some say, "No, there's several big companies and everybody's an independent contractor, but everybody works with those few providers." And others say, "No, no, I set my own rates. I negotiate my own contracts."

Tom Sheehy: Right. Okay. That's a good question. Look, I can't tell you that I know every single provider in this space. And I'm sure there are big companies that employ folks. I don't pretend to be an expert on all of that. My client that I worked with, they were primarily small operators. And the sign language interpreters, the real-time captioners absolutely set their own rates. I mean, they get paid pretty well. I think mid scale for them is somewhere around 67,000, \$70,000.

Tom Sheehy: Look, there's advantages and disadvantages, but there may be big companies that have exerting more control. And there could be big companies where this is happening and it's not good for employees and staff. I don't know that, but I know that there are a lot of small agencies and small providers working as independent businesses that this type of independent contractor model, it's really necessary for them in order to operate.

Tom Sheehy: And again, we appreciate the legislature working with us to acknowledge that and making some of those adjustments. We just hope the baby doesn't get thrown out with the bath water when EDD rolls in, because I'll tell you what, they're very aggressive. And even when they have frivolous facts, they can string you out in administrative litigation for years. And if you're an employer, you've got to hire a lawyer. And now you're paying six, seven, \$800 an hour to protect yourself. So, the stakes are very high.

Lorena Gonzalez: And I'm sorry. If I could just clarify because we spent so much time on interpreters and it is really broad. And when we talk about ADA, let's ensure we're talking about the client. The client does have these rights. Those are civil rights that the client enjoys. We as a society have a responsibility to pay for those rights. And so when we want interpreters to be paid more, that's because they're necessary. They're part of legally established rights for the client.

Lorena Gonzalez: So I want to be very clear about, that's not, we're not talking about the workers civil rights in that situation. It's the clients. But number two, in interpreting, transcribing, and all of these things, there's a couple things that go on. Number one, at first, we didn't think there need to be an exemption, because if you're an independent contractor and you have your own business as an interpreter, you're actually providing, you're providing a service to things, to people, or to a school district, or to whoever, a hospital that's not in the business of transcribing or of interpreting.

Lorena Gonzalez: So there is no ABC problem. You're actually doing ... You're like when I hire a plumber, no offense, but if I'm a hospital, I can hire a single plumber. That's fine. That's allowed. It was allowed under Dynamex, it was allowed under, I guess we could ask on Dynamex, but definitely it was allowed under AB5. What we found out in the process is this is a very complicated area of law, or area of employment practice. So you have to distinguish between individuals who want to be independent contractors and work through an agency to find those jobs.

Lorena Gonzalez: And then you have individuals who are basically working for a company, and that company's working as a labor broker. And trying to distinguish between the two was that nuance that Tom is talking about, that we really worked on. When is a business working as just a referral agency and the individual has the right to say no and not be dinged, has the right to set their own hours, has the right to set their own pay. Can work for whoever they want. Multiple agencies do all that. And who are those folks who are working for a single labor broker or maybe two labor brokers and are really being controlled by those labor brokers? Both of those exist.

Lorena Gonzalez: We had some other situations with interpreters. It's really uncomfortable to talk about because, to be honest, in my district in particular, which is where I represented, is a primarily Latino immigrant district. And we heard from so many interpreters. And there is, I don't know how else to put this, but there's almost like a class or cast system. So, I have my own business, I'm a small business. I do interpreting. I get hired by a school district to come in and do PTA night with parents. And they need multiple interpreters, maybe in multiple languages, maybe all in Spanish. And so I know I can't handle this all by myself-

PART 3 OF 6 ENDS [01:36:04]

Lorena Gonzalez: ... in Spanish, right? And so I know I can't handle this all by myself, for whatever reason, maybe they have separate rooms or multiple discussions. So then I'm subcontracting some of this job out to a friend or another interpreter. And everywhere you go down the line, the last interpreter is getting less and less money. And actually it was the ones who were at the very end who would come to me and say, "Yeah, we're getting screwed." I mean, we're getting really the scraps of what's left. It became this unofficial employment practice where an interpreter would say they were their own business, but really they would just be informally hiring folks, sometimes not even qualified to do the interpreter through a 1099.

Lorena Gonzalez: We were trying to standardize that, which was also a civil rights issue for the people who need that translation, quite frankly. And I shouldn't say interpreter, those are translators. I don't want to conflict the two, translators versus interpreters. I learned a lot during this. But we did have all of these issues we were trying to deal with when we were dealing with interpreters, translators and captioners, and trying to create a system by which workers weren't exploited, but individuals who wanted to operate as their small business could. But an individual who had, an interpreting small business could always contract with another business, period. It's just that their employees had to be employees.

Tom Sheehy: I really appreciate Ms. Gonzalez making the distinction between translators and interpreters. It's easy to lump them all together. I really appreciate she made that distinction. Because think about it for a moment. If you are Spanish speaking and you don't need English, of course you need a translator, but if you want to, eventually you could actually learn English. But if you're deaf, if you

want to, you can't eventually just start to hear. And that's why the American with disabilities act was passed to make sure that people who are deaf in heart of hearing and can never, I mean, I guess with a cochlear implant, with some people that can restore hearing, but those folks are never going to be able to hear. So they have to have these services.

Tom Sheehy: And finally, I just want to make a point. The point that I was making is, if we hadn't been able to get the changes in law that we were seeking through the legislature in Ms. Gonzalez's office, some of the people that were providers and working through multiple agencies, they wouldn't have been able to do that anymore. And the net effect of that would've been not just that they would've lost income. It would've been that deaf people that needed them to live their lives wouldn't have had access to them. That was really my point. I inferred it. I didn't say it explicitly.

Tom Sheehy: But the big concern, at least from the work that I did was we didn't want to see deaf and hearted hearing individuals lose their ability to function normally in society doing the things that all of us here on this call take for granted every day. And as I said, Ms. Gonzalez and her colleagues worked with us. We appreciate that. I just hope that it doesn't get undone by EDD when they start rolling out all their audits, the governor put in millions of dollars and a lot more staff to get very aggressive on auditing. And I sure hope that they're not going to undo some of the work that we did trying to leave a safe harbor for the folks that need and deserve one.

Brian Moriguchi: Thank you very much.

David Chiu: I'll just jump in for a moment to answer some of the questions that I had heard earlier, which is, and let me say this to maybe move the conversation a little bit. I was a little surprised that the U.S civil rights commission that you were diving into this topic, because it hasn't frankly, when you think about civil rights protections, traditionally it's about protections for protected... Protections on the basis of race or on gender. And those issues haven't been directly implicated in the litigation we're talking about. What's central for the litigation we're discussing is, should certain classes of workers be categories in one class or another in part? Because of the implication of that's going to have, not just with regards to their rights as workers, but with regards to their rights vis-a-vis and their plight in the economy.

David Chiu: But what I will say is the ability for these workers to subsistence society is very much a function of where they are classified. So if they're not classified as employees and they're classified as independent contractors, it makes it that more difficult for them to be able to have healthcare, to have childcare, to be able to survive in our societies as it stands. So I want to just make that first point. The other thing though, there was some discussion around women and those workers that are looking for more flexibility in society as if that is an argument for independent contractors. And this notion, and I know it's been

alluded to a few times in this discussion, but the notion that flexibility is incompatible with employee status, that is just patently false. Those two concepts are not mutually exclusive, nothing under 85 would prevent businesses from providing their workers with flexible scheduling.

David Chiu: I know that as a former local legislator in San Francisco, that authored bills in this space around flexible scheduling and I think the fact that during this pandemic workers and businesses have actually adapted to the pandemic shows that you can actually have flexibility in the workplace when it comes to employees and employers, you don't have to be an independent contractor. These labor laws that protect minimum wage and overtime and safety and outlaws, they serve as a floor. So we're not creating this sort of race to the bottom where workers can only opt into flexibility if they want to work for less than a minimum wage.

David Chiu: What we're saying is, there ought to be a floor, but companies can decide whether they want to provide flexibility to their employees. Flexibility is within the control of an employer and thus that employee. So again, this idea that somehow, if I'm a woman, I have to be an independent contractor because that's the only way I'm going to get flexibility. That is just a myth that's been put out with an awful lot of marketing by some of these companies.

Tom Sheehy: All due respect to the city attorney from San Francisco, who I also know, and very much respect. I disagree with him that employers have to follow the law. They have to function within the labor code and nobody on this call is going to dispute that. And there is plenty of opportunity within that labor code to give employers more flexibility. And when those opportunities present themselves as legislation they don't ever get through. And so it's very difficult to legislate into the labor code, the types of flexibility. I think Mr. Chiu you're referring to it's not somebody's imagination. I'm not making it up. And it's a real issue, employers have to deal with.

David Chiu: I guess, and if I can just respond to our friend, Mr. Sheehy, I would agree with you that, I think we're actually saying the same thing. You can have flexibility in the employer, employee relationship. You are not forced to only go into the independent contractor box. I think we're actually saying the same thing from two different directions.

Brian Moriguchi: If I can ask for some clarification there, Mr. Chiu. When you say that a business can do something, there's a difference between a business that can do it versus businesses may choose to do it. Can you clarify your point there. If you understand what I'm saying, that businesses, they can do it, they can hire somebody part-time if they wanted to give somebody flexibility in their schedule, if they wanted to, but in reality, do businesses choose to do that because it's really up to the business, whether they wanted to do that?

David Chiu: Yeah. I think that's entirely a correct statement, but here's the other thing I will say, when there are some companies in the marketplace that are misclassifying workers and putting people into the wrong box that gives them a competitive edge in the marketplace, these are the other companies that are playing by the rules and paying the right wages and providing the right protections and benefits. That's what city attorneys around the state are focused on. We are worried about those companies that are violating employment laws, giving them an advantage in the marketplace and undercutting those companies that are not only abiding by the laws that they should, but want to provide more flexibility. I think if all the companies had a level playing field and provided the rights and protection that they're required to in the law, we'd have a lot more discussion around what flexibility in the employee context could look like.

Brian Moriguchi: Thank you, Mr. Gonzalez, did you want to say something?

Lorena Gonzalez: Yeah, I just want to point out, and this is way off topic, but just so we're clear what Mr. Sheehy brought up is for example, the 10 hour day. Now I know, I'm assuming given your background, and I don't know how Mr. Moriguchi is that correct? Am I pronouncing that- -

Brian Moriguchi: It's enough.

Lorena Gonzalez: That you understand, you probably worked 10 hour days and you're like, wait a minute, the 10 hour days are allowed, 12 hour days are allowed. Under what circumstances are they allowed? Yes, they are. Under two circumstances in California law. One, if you have a union contract, because the union can actually go to the employees and ensure that it's a equitable transition, that there's leverage by the employees to get what they need given it's a 10 or 12 hour, day. Or second by a vote of the workplace. Even in a non-union workplace, you can have a vote of the workplace and go to a 10 hour, day of four tens rather than five eights without overtime.

Lorena Gonzalez: So there are provisions, but what our law says is that almost all employees are at a leverage point where they don't have the ability to make these demands. And so we try to make it a little bit more equitable in law. What we saw during the pandemic is employees became powerful. They became more powerful because their services are necessary. And so what we're seeing is more flexibility in the workplace. Now, as employees gain more power then employers say, "Okay, we'll go to a hybrid situation. You can work from home these days, you can work these hours. What I need is employees." And it's amazing when you adjust the market and really ensure that everybody has some voice or some power, then you end up with a more equitable situation and you get more employers who are willing to be more flexible.

Lorena Gonzalez: The other thing that's really important, and I do think it's a civil rights concern. And I want to make sure that we know this is that employee status is necessary to close the racial wealth gap. And that's very important. Workers of color have

the most to gain through employment status because then they have access to collective bargaining. And it doesn't matter what your opinion is on labor unions. It doesn't matter where you are. The fact is every study shows. When employers in high risk industries properly classify their workers, employees, many workers can transform low wage precarious work into good quality stable jobs through collective bargaining.

Lorena Gonzalez: According to the 2021 report by the Center for American Progress, black households with a union job, or a union member in their household have a medium wealth that is more than three times the median wealth of non-union black households. The same is true for Latinos, but five times the median wealth. So when you talk about the civil rights of actually having wage wealth, growing your wealth, the fact that the best way to do that, and this is I'm sorry, there's nothing that can really contradict this. This is every study shows. There is a union advantage, and the only way workers are able to establish that kind of power to come together to collectively bargain is if they're employees and that's an NLRA issue and nothing we can change in the state of California.

Brian Moriguchi: Okay, great. Thank you very much. Alison Dundes Renteln, do you have any questions?

Alison: Yes. Thank you very much. I first want to thank the distinguished guests who presented. We all found it fascinating and provocative, but I do still have two questions and a couple of comments. So the first question that professor Clare Pastore posed is, are labor rights, civil rights? And does this really pertain to the work of our committee? And I think that although many of us wish the United States treated economic, social and cultural rights as civil rights, historically labor rights have not been part of the work of the U.S commission on civil rights. So we need some clarification of that. And so I think that's one of the things we were hoping that could be addressed. So one question is, could we revisit this conceptual question posed by professor Pastore is, can you show us the connection to the protected classes that we're supposed to be concerned with on this committee? At least that's my understanding.

Alison: The second question I have has to do with, what would be the model law in this area? People have differing views about the successes and failures of AB 5 and the attempts to rectify any errors with exemptions and so on. But the international labor organization has issued many reports on issues of labor policy. And in 2016, there was a report issued nonstandard employment policies around the world that has chapters, this deal with the issue of misclassification. So there are many countries around the world that have grappled with this question of misclassification.

Alison: So I'm wondering for those present and those who had to leave, whether attempts to deal with this challenge, whether it's a civil right or an economic policy matter, are there best practices from other countries, from other legal systems? Could we be guided by these models and extrapolate, even though

other legal systems obviously differ in some substantial ways, can we still extrapolate from their experience where these things have been documented to help California? So that's my second question. Is to what extent, if at all, have those who are the experts been guided by the reports that have been issued over the years by the international labor organization?

Alison: And then I just want to make two quick comments. One is, it seems that many are justifiably concerned with the role of interpreters and indeed the right to language is a fundamental human right. The international covenant on civil and political rights in article 27 guarantees the right to language, which jurists have construed to mean that people have a right to an interpreter. It seems as though a lot of what we've been hearing over the weeks and months we've been discussing this is there needs to be carefully drafted specific legislation on court interpreters to ensure that they're paid appropriately, that they have flexibility, that they're certified only in some states, do they certify court interpreters?

Alison: And we've heard a lot about the Americans with Disabilities Act, which was a model for the convention on the rights of persons with disabilities. The disability rights treaty is the first treaty. As many of you probably know in of the 21st century in the United States is not yet a party to that. So it seems to me, my comment is that it seems like we need to do something to help interpreters and that they play such an important role. And so it seems like this particular topic or niche occupation deserves some policy, but it may not be a civil rights issue, at least in the way that the United States conceptualized the civil rights.

Alison: And then my final point is that I thought it was wonderful at the beginning of our session, that there was a request for civility in our conversations. And I wanted to say, as a professional woman, I found it very disconcerting that there was a comment made about the demeanor of Ms. Gonzalez, whom I admire very, very much. And I think it would've been a good at that moment to say something to the legislator who made that comment. And I hope that we'll be careful about that in the future.

Tom Sheehy: Can I just say something real quick? I want to be clear. I think that the provisions that were put into law as it related to sign language interpreters and real time captioners, I think it was done in order to help them. I think it is helping them. I don't know how many other ways I can say this other than we were very pleased to work with the author of AB 5. She, Ms. Gonzalez listened to us. We didn't get everything we wanted, but I believe we got what we needed in order to protect certain classes of employment models that would allow sign language and realtime captioners to deliver these services. So if you interpreted any of my comments to say that, I think that they didn't get addressed. I apologize for not being more clear.

Alison: Oh, no, I'm sorry. Maybe I should name the person. No, it was comments about laughing, make laughing about the anecdotes. And we don't even know. I just

thought it was completely inappropriate. It was not you, it was the legislator who left and made a comment about demeanor. And if men smile or laughing at a comment, someone else made, they aren't spoken to in that way. No, you didn't. And I apologize that I led you to believe that.

Lorena Gonzalez: I do want to take your points because I think they're very important. And I think when I heard that you all were taking this up as a civil rights issue, I thought, well, this is really clear. The only civil rights implications are civil rights statutes that are empowered to employees in the workplace. So title seven at the federal level, at the state level, the unrest civil rights act or FIJA basically, which is supposed to protect employees from discrimination, from civil rights abuses. The problem is, it's only for employees. We actually changed the unrest civil rights act to include harassment, sexual harassment a few years ago.

Lorena Gonzalez: And I think city attorney too, and I both voted for that, for that bill to extend it on harassment, but that's all we have. And so when you talk about a AB 5, which is yes, trying to make sure that employees are treated like employees, there's I think indisputable evidence that it could only broaden the civil rights of those employees because they have access to justice in laws that were already written.

Lorena Gonzalez: And when we look at economic rights, which I'll make the argument every day, that economic rights should be civil rights and that we should look at unionization as a way to achieve that, it's not in the course of American law. It's not what we've accepted yet as civil rights. So thank you for bringing that up. And I'm sorry if that wasn't clear enough.

Lorena Gonzalez: The second thing is gig workers across the world are dealing with this. Absolutely. There gig companies have caused upheaval in every country. In every country's highest court that has determined this, they've determined that these workers were misclassified and the companies need to do more. And so misclassification as it's taken up worldwide has come to the same conclusion, quite frankly, that our California Supreme court did as well. And so this is not unique to California. It might be unique to the United States, although when you look at the ABC test and that, which we modeled it after, it's actually modeled after a law in Massachusetts.

Lorena Gonzalez: And so it's been in effect, not just in Massachusetts, but a number of states for different provisions of the law and something 26 other states. In fact, it's just something that we applied more broadly in California. So I think that's important to bring up as well. I totally agree with you on what we're doing about interpreters and translators. And that was our hope. If I'd stayed in the assembly to actually take that on, because the number one employer, if you will, the provider of interpreter services or translators are governments.

Lorena Gonzalez: Sometimes they're local governments or hospital districts or the state, and the fact that we're not providing enough, that's a civil rights issue. That is a true

issue that we need to address. And we need to address through legislation to ensure people like the judicial council are actually paying attention to what they're paying for interpreters and translators.

Lorena Gonzalez: It's something I plan to continue to work on from my position at the labor federation, but it's something that continues to be an issue, medical translators, and interpreters as well. And it's something that we're hoping through unionization we can leverage and push for more laws at.

Lorena Gonzalez: And then finally thank you for bringing up. I'm very used to having my demeanor questioned in this group, but I will say it's very important. Nobody has ever called it out before. So thank you. As somebody who I think it's been pretty public, I left the legislature and then had an arson attack on my house. I think that the level of discourse has grown to a point where I'm never sure what is going to happen. And we've had attacks on us that were paid and institute by business and personal and social media and in person, little snipes, I don't even make it into my head anymore. But thank you. I do appreciate that. It's rare that women call out for other women. So thank you.

Brian Moriguchi: Thank you very much.

Clare: Yeah. I ask another question, Brian, based on some of the discussion Star Parker on the civil rights question, I'm still wondering why is the NAACP on record to opposed to.

Speaker 5: Clare, I'm sorry to interrupt you, but we don't actually have time for second round questions. We need to make sure we leave enough time for our public comment, but we can absolutely follow up with written questions.

Christopher: I hope you're going to get to me.

Brian Moriguchi: Yeah.

Speaker 5: Exactly. Not everyone has been able to ask one question.

Brian Moriguchi: Yeah. Yeah. Afterwards, everybody you guys know that you can submit a question in writing and we'll send it out to all the panelists as well to ask for responses, but we are running a little low on time. So I would like to get through the last few committee members. Rogelio Ruiz, do you have any questions?

Ruiz: Not this time, Brian. Thank you.

Brian Moriguchi: Thank you. Maimon Schwarzschild, do you have any questions? Maimon are you still with us?

Maimon: I'm just unmuting. I do, but if time is so pressing, I would yield to colleague Yost for the moment and then come back to me if there is time for me as well.

Brian Moriguchi: Okay. Thank you very much. Rachel Sigman, do you have any questions?

Rachel: Yes. I'd like to pose two questions that I hope are very quick. Again, thanks to the speakers. Like others have said has been very informative. So I wanted to just follow up on a point that Mr. Chiu mentioned, you said that there was perhaps some kind of disproportionate information distributed about prop 22 stipends, that the information did not reach some Latinx workers. And I just wanted to ask if you could expand on that at all, and if there's any other sort of administrative processes that might point to any kind of, sort of disparate impacts on workers based on their race, religion, national origin sex, etcetera.

David Chiu: Yeah. It's a great question. And let me cite the survey that I mentioned. It was a National Equity Atlas survey that found that only 10% of the drivers that had been surveyed received a healthcare stipend and that many of these drivers are so low income that they are covered by Medicare, which makes them ineligible for the stipend under prop 22. And what the survey also found is that this very much depends, there are significant differences across ethnic and race lines and Latinx drivers in particular, they are least likely to know about this. I do think this is a conversation that we ought to have given that, depending on what happens with prop 22, obviously we are part of a challenge to proposition 22. We'll see what happens in the courts, but depending on what happens, that needs to be looked into.

David Chiu: One other thing I'll just mention, there was a question around why the NAACP had taken the position they do. All I'm going to do in answering that question is point folks to a number of articles that came out about the fact that the head of NAACP received \$1.2 million from a variety of corporate campaigns and resigned over a conflict of interest backlash related to that. I will tell you no one from the civil rights community in the bay area has approached me about suggesting that AB 5 or opposition to proposition 22, somehow violates civil rights. The civil rights community that I know statewide very much has come on the support of gig economy workers being classified properly so that they have the protections that the law affords them.

Brian Moriguchi: Okay. Thank you very much, Rachel.

Rachel: Yeah. Sorry. I had a second part of the question as well. So I just wanted to ask, we've heard a lot today about employees, people who are classified as employees having protections against discrimination. And so I just wanted to ask if in the wake of AB 5 or prop 22 or AB 2257, if we saw any changes in the numbers of labor discrimination cases or complaints, or if there's any data to that effect that any of the panelists know about? Thank you.

Brian Moriguchi: Any panelists want to respond?

Lorena Gonzalez: I know on the labor side, there were thousands of claims that were made to the labor commissioner on wage theft claims. However, and we have tons of

anecdotal evidence of people gaining rights from a AB 5, actually a group of workers unionizing at a theater who were previously independent contractors. I got a special message from a woman who is my neighbor, whose mother for the first time in her life. She's a nail technician, got reclassified as employee and had the right to paid sick days.

Lorena Gonzalez: And that was incredible. However, when you talk about civil rights, implications, those have to be done through a longer period. And unfortunately, our system takes too long. And so it's going to be a while till we get that kind of data. And quite frankly, the number of people we're dealing with is not so huge that I don't know that you'll see a massive increase or decrease. What you'll see is over time, we'll see people who are able to assert the rights more.

Rachel: Thanks very much.

Brian Moriguchi: Thank you very much. Christopher Yost.

Christopher: Thank you. I really appreciate all the panelists. You're smart. You're experts in your field. You're passionate about your positions. I appreciate the energy that you've brought to this panel. Thank you very much. I think Clare gets it just right when she emphasizes that really what our focus is here is the implication of AB 5 on minorities, women, disadvantaged communities, whether that impact has been negative or not. That's our focus. And so I have a couple of questions if I'm going to interpret Brian's limitation broadly one question per panelist.

Christopher: So to Mr. Sheehy, given that we're concerned about the voiceless, I was a little bit concerned about your reference to working with the California Labor Federation on seeking exemptions to AB 5. It seems to me that the communities we're talking about are voiceless, powerless. And then they don't all have lobbyists who could lobby on their behalf, or maybe not of interest to the union that wants to unionize as many folks as they can. I know Ms. Gonzalez thinks the union is the panacea. I think their shrinking book of business over the past 50 years maybe suggest otherwise, but I'm concerned that, and I'd like to hear from you, Mr. Sheehy about why is the California Labor Federation involved in passing on exemptions to AB 5? I'm troubled by that.

Tom Sheehy: Okay. Well, first of all, I certainly can't speak on behalf of the California Labor Federation. So I'm not going to do that. And I don't have any act to run.

Christopher: But you did work through them. I'm curious about- -

Tom Sheehy: I'm going to answer your question. Don't worry. I'm not going to avoid it, but I want to make it clear. I don't have an act to run with them. I'm just making an observation. Look, we work in Sacramento, those of us that work with legislators and work with advocates and work with the governor's administration, the legislators and the governor try to write and enact good policy. There's a lot of politics that go on. And you can't be naive and think that

politics don't play a pretty significant role in what does and doesn't get introduced and what does and doesn't pass, because it does. So I just made the observation, which in my case was true, is that I was hopeful and I still am hopeful that there could be some more work done in this area.

Tom Sheehy: And when I tested the waters, it wasn't just with the labor federation, but after all, they were the sponsors that worked so closely with Ms. Gonzalez on AB 5 and subsequent legislation. At that time, when I talked with them, I just didn't sense any appetite to look at any of the issues that I was bringing. And I can assure you the issues I was bringing were legitimate. Now, different people may have viewed them different ways. Some people may agree, some may not, but if you don't, at least have an opportunity to have the discussion, then there's not a whole lack of a lot you could do. So I don't mean to, I'm not casting any aspersions. I just think that the political climate, at least six months ago, when I tested the water and look, you could just look at the evidence in the legislature.

Tom Sheehy: I mean, in 2021, there were 38 bills introduced mostly by Republicans, but a handful of them by Democrats that would've amended some part of the labor code section 27, 75 at sec, dealing with the labor classification. And there was only one bill that ever really got a hearing or moved. And that bill was a very minor issue. And the vast majority of those bills just never even got a hearing. And then I think this year there was maybe only one or two bills, maybe only one that everybody got the message real quickly, that it's futile. Trying to do anything more in this area. And I'm not blaming one particular organization, although let's face it. The labor federation is an important organization and they have a lot of clout in Sacramento. There's no question about that.

Tom Sheehy: I just hope that in the future, if I, or others who have legitimate issues that they're bringing before labor leaders, bringing before business leaders, bringing before legislators, bringing before the governor's office, I just would hope that we could get a conversation with an open mind. We know that people aren't always going to agree, but I hate to just see the gate shut lock, put a padlock on it, and people walk away and say, "We're done. We're not going to do any more work in this area." And that's kind of how it felt to me six months ago.

PART 4 OF 6 ENDS [02:08:04]

Tom Sheehy: Can do anymore work in this area and that's kind of how it felt to me six months ago.

Christopher: Okay. Thank you, Mr. Chiu, city attorney Chiu, you mentioned, I think at the beginning of your comments, that you called it unfortunate that prop 22 was passed by the general electorate of the citizens of California. And I'd like to hear a little bit more about why, do you not trust the citizenry? What's your challenge with the citizens passing prop five? I'm just interested in why you found that unfortunate.

David Chiu: Yeah. Well thank you for asking that I'll answer the question in part, by responding to a thought I had when Mr. Sheehy was responding. I know I hear from some members in the business community, they talk about the all-powerful California Labor Federation. I will say from my perspective, on the other side, the California Chamber of Commerce and business interest in Sacramento have been very effective at getting their way on many things in Sacramento. Every year they come up with an annual list of job killer bills. And I just happen to read this this morning. So this is why it's on my mind. And 90% of the bills that they include on that list, the so-called job killer bills, they've defeated, they've neutralized and part of their allies, not just in the Republican party, but in the Democratic party.

David Chiu: So I think it's fair to say that these issues are hard, both on the business side and the labor side there's significant influence, but somehow the suggestion that it's one sided, I just wouldn't agree with. Now that goes in part to my comments around proposition 22. I will say this, there were discussions that were happening between labor leaders and business leaders on how to move forward on these topics and what happened instead. And I don't blame the companies that sponsor proposition 22 for spending over \$200,000,000 for paying drivers for their support and their stories, for putting claims that somehow flexibility and employee status are mutually exclusive under the law, which we obviously, I think have hopefully debunked today. But the fact of the matter is there were an awful lot of things that were said in that campaign that I think kind of stretch the facts. Now to your point, of course, the ballot process is what the ballot process is.

David Chiu: And there are plenty of interest that spend enough money and they get what they want past at the ballot box. But what this has literally meant from my perspective is that hundreds of thousands of workers in the state of California are now in a different box. And if they're being paid effectively \$5.64 an hour, what does that mean for San Francisco, Los Angeles, all of the cities and counties and the state of California when it comes to the social safety net that we now have to pay because of this ballot measure? That was really my point.

Christopher: Okay. Thank you. I appreciate that. Assemblywoman Gonzalez. Hello. I don't know if you remember. We met before. I will join with Mr. Sheehy and say, Ms. Gonzalez is always very lovely to meet with. She takes the time to listen to you. And I appreciate the time that she spent with me and my group that were in her office over the course of a couple of years. Hello, how are you?

Lorena Gonzalez: Good, how are you?

Christopher: I'm well. So the ABC test was, I think we could probably all agree, was the judiciary usurping a legislative authority in taking and adopting a test that hadn't even been briefed to it. And so the legislature had dropped on its lap, this opportunity to take back its power and do some legislating, which you all did. But what was designed to be a bill of general application became a bill of

general exemptions. And so we've been doing this by exemption process as opposed to general applications sometimes adopting the Borello Test, which is a very fact-intensive test. And sometimes the ABC test where I think most people would agree, the part two of that test follows the whole. And so for purposes of our committee, we really want to know the voice of the minority, the voice of the women and disadvantaged communities, how their impact was taken into consideration.

Christopher: Not only in the passage of the general AB5, but in the exemptions. And then we've heard an awful lot of stories, anecdotal I agree, from people who have testified before this committee that they don't want to be part of the general employment process. They've had bad experiences. They don't want to be part of a union given the union's history of discrimination, and even their own discriminatory experiences in employment.

Christopher: And so we have people who don't want the government one size fits all. They want to be entrepreneurs, they want to own their own companies. They want to set their own hours. And I've worked for businesses and been in government for 33 years. And I can tell you that the idea that it's plug and play in every industry, I can plug and play at my leisure and the companies are going to have be able to accommodate that, probably isn't realistic, just given my exposure to government over the past employment. And even done a lot of union work in my life, it's just not a reality. It sounds good. Nothing in the law prevents it. It's just not plug and play. So what sort of research and determinations did your committee take into consideration when passing AB5 and its exemptions, as far as the impact they would have on women and minority communities?

Lorena Gonzalez: I'm going to state the obvious in case it's not clear that I am a Latina woman that represented a district that was over 70% people of color. Well over 50% women. Working class folks, I would say that every representative voted into office by a majority minority community, by communities of color voted for, and contributed to and often were co-authors of AB5. So if we're talking about usurping power, all right, first of all, let's talk about a little bit about that. The courts did usurp the power of the legislature because the courts themselves put into effect Borello. The fact that the legislature was remiss on actually addressing misclassification was something that the courts usurped their own power, right? They put together Borello. They said, oh, that didn't work, nothing. We haven't seen any movement by the legislature. So we're going to create something new and maybe that will make them them work.

Lorena Gonzalez: And we did. We took that to the extent of, okay, you gave us something that by the way, might be unworkable in some situations. So let's take your reasoning. Let's take case law. Let's take everything that people had brought together about what is a small business. I believe that yes, there are entrepreneurs in every community. They want to be entrepreneurs in small business. Let them be small businesses, but let's be very clear. An Uber driver is not a small business. They don't get to decide who they're taking where, they don't get to pick

somebody else up on the street. They don't get to collect the money themselves. They don't get to set their own rates. I don't know anyone who believes that if you're your own small business, that you're subject to all of those rules and conditions. And that's what was happening in the most extreme cases in the gig economy and what continues to happen in a ton of misclassification suits before and after AB5.

Lorena Gonzalez: And so usurping power is an interesting concept, except it was the neglect of the legislature. And perhaps I'm the dumb one, because perhaps legislators before me realize that you don't want to step into something so controversial that of course will upset some people, right? Truly upset some people despite where they are in society, despite what color of their skin, despite what gender they are. But for the most part, I would say that since in representative government, that most of the people who were listening to their constituents, who were making these decisions, who were voting for and promoting AB5, who in fact put into law, actually represents those members and were all reelected, that perhaps that is an indication of representing the people. And I will say this, I was not only reelected. I was reelected with over 72% of the vote, despite millions of dollars being spent against me by these companies in my own district.

Lorena Gonzalez: All right. So I'm going to assume that's a vote of confidence given by actual working class Latinos and African Americans, Asian Americans who live in my district, people of color, large immigrants and women. And that happened throughout the state. So I just want to be clear that that counts too. And as we move forward, of course, we're going to continue to listen and to respond as we always do. But with stakeholders at the table for far too long, workers, especially marginalized workers have never had a voice at the table.

Lorena Gonzalez: And in fact, they continue to struggle to have that voice at the table because of the disproportionate power that companies have over the workers. The only thing that gives those workers, a voice at the table, and really asks in a way that's non threatening, allows them to contribute and allows them be part of the discussion of what happens at work is through a union contract and through collective bargaining.

Lorena Gonzalez: So to me, you can say, I think it's a panacea. The truth is I've seen it work time and time again, whether we're talking about janitors or hotel workers. Whether we're talking about laborers or carpenters, whether we're talking about port truck drivers. No matter what we are talking about, if you want to empower people of color, marginalized communities and women, you provide them a safe space to be able to advocate for themselves and to hold power in the workplace. And that's your union contract, so.

Christopher: You're a very passionate advocate and very effective. Unions have not sold around the country. It's a shrinking book of business, but you're doing a great job. And if you were around the country, you'd probably get more work done in

that regard. Thank you, Assemblywoman Gonzalez. It's good to see you and everybody thank you for your participation.

David Chiu: If I could just add one more point to this. I think there was a suggestion that somehow the legislature with AB5 was sort of usurping something. And I just want to, I want to-

Christopher: Hang on a second. My point was this, and that was the California Supreme Court took upon itself, usurped legislative authority. I think that they were legislating from the bench. I think Assemblywoman Gonzalez is exactly right. That's the power of the legislature. And she explained, I think fairly well, why the legislature didn't want to touch that for so long. It is a hot button issue. And as we've seen in the aftermath of AB5 and Dynadex, we've seen why it's such a hot issue. But my point was the California Supreme Court had been acting as a super legislature in adopting an ABC test, which nobody had briefed, which nobody had argued for. It came up with it on its own. Like it did the Borello test. You're exactly right, assemblywoman Gonzalez. And that cried out probably years ago for legislative action. It doesn't excuse the interpretation by the Supreme Court of legislative authority, but that's a different form for today.

David Chiu: Gotcha. Gotcha. What I was going to say was that the courts in the cases that our office have involved in have sided with workers have sided with the legislature on this. So, as I mentioned before, the Attorney General of California, my office city attorneys of San Diego and Los Angeles, we brought a misclassification suit against Uber and Lyft. The court found in favor of the drivers. And that was upheld. And then proposition 22 went, which obviously blocked that. But then the lawsuit with regards to proposition 22, challenging that has been found at the trial level to show that prop 22 violates the state constitution. So again, you have a number of cases in the courts that say that we're talking about misclassification workers, you have the legislature with AB5 asserting the law. I just want to tie those threads together.

Christopher: Yeah. I appreciate that.

Brian Moriguchi: We're running out of time. So I'm going to end it there. The panelists, I want to thank you guys for joining us and the committee members, you know, that you can submit further questions for the panelists and we'll send it to them over in writing. We're now going to open the floor for a period of public comment. We ask that speakers adhere to the topic at hand. If speakers begin to veer away from that topic or begin discussing possibly important, but unrelated topics I'll 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'm going to turn it over to Brooke Perry who will be facilitate facilitating the public comment, Brooke.

- Brooke Peery: Yeah. Thank you. So we'll be starting with our public comment queue, which is people who are joined online. But I do want to note for people joined on the phone, if you press *3, that will raise your hand and let us know that you would like to make a comment today. We'll call on you after we've heard from our online public comment queue. So please bear with us. It is a little harder for us to include our call-in people on public comment, but I promise we will get to you. I just want to reiterate also what Brian said. You have three minutes. So if you're making a public comment, especially for those online, I'm going to put my hands up when you have 30 seconds left and I'm going to put two hands up when your time is up. If it doesn't look like your wrapping up your comments after two hands are up, I do have the authority to mute you. So our first commenter will be Eliza McCullough, Eliza, please go ahead.
- Eliza McCullough...: Everyone. My name's Eliza McCullough. I'm an associate with PolicyLink, which is a national research and action institute that works towards advancing racial and economic equity. And together with the USC Equity Research Institute, we've been studying how the gig economy impacts low income workers and workers of color. So AB5 provided crucial protections for all workers. And these are particularly important for workers of color because they're disproportionately concentrated in low wage jobs and thus disproportionately affected by misclassification. The experience of California ride share and delivery drivers provides a crucial warning as to what can happen to low wage workers of color in the absence of AB5. Prop 22 made ride share and delivery drivers exempt from employee status under AB5 and reclassified them as independent contractors. Although prop 22 strip drivers of the right to healthcare, Uber and Lyft promised to provide drivers with stipends to pay for health insurance, as long as they met certain qualifications. But after surveying over 500 drivers throughout California, we found that Uber and Lyft are failing to fulfill this promise.
- Eliza McCullough...: We found that 90% of drivers we surveyed are not receiving the stipends whatsoever. Instead, many drivers have had to forgo health insurance. 16% of drivers we surveyed are uninsured, which is twice as much as the national UN insurance rate. The most common way for drivers to obtain insurance is through MediCal, which indicates that many drivers are in or near poverty.
- Eliza McCullough...: Our study also revealed that drivers of color are struggling most to access health insurance. LatinX And Bdrivers were least likely to know about their ability to qualify for healthcare stipends. A quarter of Latino drivers do not have health insurance. This is double the statewide uninsurance rate for Latino workers. 15% of Asian drivers lack health insurance, which is three times the statewide uninsurance rate for this demographic group. As people of color have suffered disproportionately from COVID, lack of healthcare for these populations is a pressing public health and racial equity issue.
- Eliza McCullough...: Our findings emphasize what can happen to workers in the absence of a AB5. Under prop 22, drivers are struggling to access health insurance in the midst of a

global pandemic. Drivers of color are struggling the most. Ride share companies have failed to deliver on all the ways they promise prop 22 would make up for the loss of employee status provided to drivers under AB5. This is a labor rights issue, and this is a racial justice issue. The loss of AB5 will harm low wage workers of color. Thank you.

Brooke Peery: Thank you. Our next speaker is going to be Jennifer Santiagos. Jennifer, please go ahead. And Jennifer, you are muted right now.

Jennifer Santia...: Sorry about that, Brooke. Thank you. I'm Jennifer Santiagos and I'm based in Orange County, California, and I've been a certified healthcare interpreter for about 12 years. I also interpret in educational settings and municipal government meetings. I became involved in advocacy around AB5, as it was threatening my livelihood and my ability to provide language access to limited English-proficient individuals. And I did give public comment at a previous hearing, and so I'm grateful to be here again. I also wanted to mention that I'm an active member of the American Translator's Association and being a member of associations is something that is important and powerful. I'm even participating in a mentoring program right now. That just came to mind in terms of being able to have leverage and ability to set up professional fees. We set our own fees as translators and interpreters, and over the years, I've been able to raise them many times and be able to work with good professional language service companies that I enjoy doing business with.

Jennifer Santia...: They take care of the administrative aspect of our work. And then I actually work with 30 to 40 different agencies. I do have a few direct clients, but the majority of us, I would say at least 80 to 90% of our work comes through agencies. And it is a healthy model that traditionally our profession has been built on. I just wanted to highlight and I wanted to thank former assembly member Lorena Gonzalez for mentioning the importance of protecting the most vulnerable in terms of providing reliable language access per Title Six of the Civil Rights Act of 1964, because about 20% of our state of California consists of limited-English proficient individuals. And especially in the case of medical interpreters, it's very important that where certification is available, that we have certified interpreters so that patients can have the proper medical care and not have medical errors occur.

Jennifer Santia...: And then there are many other languages that are languages of lesser diffusion where they might not have a certification available, but actually the entity that's certified me, CCHI, is working on developing an English to English oral test, which will test the ability of interpreters to do simultaneous interpreting, consecutive interpreting, and there is a written test in place for ethics and protocols and there's many trainings available. And American Translators Association, 95% of our members have a university degree or advanced degrees. And I wanted to get into a little bit about protections. As an independent contractor, again, I set my own professional fees. I pay my own taxes. I pay into social security. I've paid for my own private health insurance ever since college.

Brooke Peery: Jennifer.

Jennifer Santia...: Yeah.

Brooke Peery: Jennifer, that's the end of your three minutes. If you just want to wrap up your comment.

Jennifer Santia...: Oh, that was the end of my three minutes? Oh, wow. Okay. Let me just... Sorry about that. Just to conclude, I wanted to mention some stats by EDD about translators and interpreters, that there was an alleged claim that there were over 4,000 individual cases of misclassification among interpreters and translators. But the EDD actually in June and July, they said that the real number of translators and interpreters wrongly classified was only 6% or 269. And because we worked for many different agencies, there were interpreters that were counted twice. So again, over 75% of us as translated as interpreters are legitimate, independent contractors and professionals that provide a very needed service. So thank you so much for your attention.

Brooke Peery: Thank you. Our next speaker is going to be Kathy Garmezy. Kathy, go ahead.

Kathy Garmezy: Thank you. Hello, my name's Kathy Garmezy and I'm here representing the California IATSE council, 52,000 women and men who are craftspeople in film, television, and live entertainment here in California. All of them work in a highly unionized industry where they have good middle class salaries and among the strongest pension and health benefits and coverage in the country. And all of them work in an industry where they go from job to job. In other words, they are freelance workers. In fact, you could say our industry is the earliest gig economy because it has operated this way for many decades. And throughout that time, our unions and guilds have been able to secure greater protections as the business has changed. And also throughout those decades, our industry and the employers have grown and remained consistently strong and healthy. We remain one of the biggest exporters for our country.

Kathy Garmezy: And as all of you know, most of it is homegrown for over a hundred years here in California. In the past decade, there's been a concerted effort to bring more women and people of color into our industry, both in front of and behind the camera. That effort while far from over is increasingly successful. And when those women and individuals of color enter our industry, they can't be misclassified or put in jobs that pay less than others who do the same work.

Kathy Garmezy: Our members have laws to protect them can file claims to state agencies can bank their paid family leave, have employers obligated to protect them from a hostile work environment. Contractors have none of these protections. Women also have pay equity laws and ability to hold employers accountable for gender discrimination, which contractors don't have. And some, an industry can be highly successful. Hiring unionized employees on a freelance basis, providing them with decent jobs and benefits and ensuring they have access to the same

safety net as other California workers. It is fully achievable as demonstrated by our industry. One of the largest, most successful and world renowned in the world. And I just want to add one other thing because people often think of our industry as an industry of glamor. But in fact, it's a middle class industry and nobody's born a star. Nobody becomes top of their craft nominated for academy award. Everybody is as vulnerable when they begin in our industry as our workers throughout the state. Thank you very much for the opportunity.

Brooke Peery: Thank you. Our next speaker is going to be Kim Kavin. Kim, go ahead.

Kim Kavin: Hi, my name's Kim Kavin. I'm one of the co-founders and leaders of the non-partisan grassroots group Fight for Freelancers, which was created in 2019 to stop these kinds of deeply misguided anti independent contractor laws from spreading nationwide. I have two comments I'd like to make about what I heard here today. First is that I want to strongly urge this commission to take Lorena Gonzalez up on the offer that she made you here today. She told this commission that she can provide, and I quote, thousands and thousands of names of misclassified individuals. I urge you to take her up on that offer because she's been saying that line for several years now, and nobody can find any evidence that it's true. So please follow up with her after this is over and take her up on her offer to provide those names to you.

Kim Kavin: See if you can verify that those people really exist. And then second, I want to address the really deeply flawed picture that Ms. Gonzalez and Mr. Chiu gave you today, where they offered you a handful of anecdotes as if they are proof that most independent contractors are miserable and being forced into low-paying work that they don't like. And don't want Mr. Chiu said, people aren't choosing this, that companies are forcing this on people. Ms. Gonzalez said that being an independent contractor is dangerous. She kept saying over and over, it means working for less than minimum wage. She said that, and I quote, every report that has ever been generated, unquote, shows that independent contractors are hardly earning anything. So I want to tell you about some of the nearly two dozen studies since 2015, including from the US Bureau of Labor Statistics and the US Government Accountability Office that show that 79 to 85% of independent contractors are in fact just fine.

Kim Kavin: This year, Indeed found half the women who switched to independent contractor work reported improved mental health. NBO partners 2021, two out of three independent contractors believe they are more secure than traditional workers. 87% said they're happier. 78% said they're healthier working independently. 2021 Upwork, nearly half of freelancers say they earn more freelancing than with a traditional job. And that was up from 32% in 2019. In 2020 Gallup found that self-employed people rate their situations higher than workers in traditional full-time jobs. 2020 ADP research, more than 70% of independent contractors say they're working independently by their own choice. Not because they can't find a traditional job.

- Kim Kavin: 2020 Upwork, three in five freelancers said they're making the same or more than in a traditional job. 60% surveyed during the height of the pandemic said there's no amount of money that would convince them to take a traditional job. 2020 NBO partners, more than half of independent workers say they feel more secure working independently and especially important to this commission is 2019 study from Fresh Books. 73% of self-employed women say they have a better work life balance. 68% earn the same or more than in a traditional job. 59% say they have less stress. And 57% say they're healthier. If you'd like to see any of these studies-
- Brooke Peery: Okay that's the end of your three minutes, thank you. If you'd like to submit additional information to the committee-
- Kim Kavin: All of those studies are at fightforfreelancersusa.com. Feel free to take a look.
- Brooke Peery: Okay. Thank you. Next we're going to hear from Karen Anderson. Karen, go ahead.
- Brian Moriguchi: Brooke? Brooke?
- Karen Anderson: Can you, can you hear me? Can you hear me?
- Brooke Peery: Yes, go ahead. Okay.
- Karen Anderson: I was a panelist on an earlier panel, so I appreciate the committee allowing me to speak just briefly here. I just wanted to point out that the previous panels, the committee has hired a transcription services done by rev.com to transcribe all of your panels. And if you look at rev.com, you'll see that the only freelance transcriptionists that are not allowed to work for them are in California. So AB5, as I've mentioned before, has decimated the freelance transcription profession, which impacts seniors and women the most. As far as what was talked about today, about the deaf and hard of hearing, I wanted to read a letter from the California Coalition of Agencies Serving the Deaf and Hard of Hearing Persons that was written September 4th, 2020, which was the date that AB-2257 was signed into law by Governor Newsom.
- Karen Anderson: This is an example of how these exemptions are not a panacea and how a good portion of the people that they're trying to exempt actually still are falling through the cracks, and this would apply to people of color. As service providers, we employ and contract with sign language interpreters. Both organizations recognize the importance to support deaf and hard of hearing Californians who are black, indigenous, and people of color, and those who come from limited English speaking households that benefit the BIPOC and deaf interpreters. It is by and for our community that we strongly protest the naming of only one certification entity in this bill. As deaf leaders, the bill wrongfully and exclusively identifies the Regency of Interpreters for the Deaf, as the only recognized certification for sign language interpreters. They had sent a letter

cautioning Lorena Gonzalez to avoid naming only one single certifying body in order to recognize other quality assurance entities that exist in the United States and provide sign language interpreters with choices of affordable certification.

Karen Anderson: We also shared our concerns with other groups advocating for change in the cleanup bill, most of who are not deaf and did not heed our warning. So it appears no one caught this huge mistake, and that's why we are bringing this to your attention. Moreover, this proposed law will encourage a monopoly of an organization that has no active certification for deaf interpreters, although it's website lists certified deaf interpreters as one of their active certifications. These concerns were not addressed by Governor Newsom or the author of the bill AB-2257. And I'm going to submit this letter to you so that you can read it. And like I said, they're saying that the AB-2257 cleanup bill only allows for 25% of sign language interpreters to operate as independent contractors.

Brooke Peery: Thank you. And that's the end of your three minutes. Next we're going to hear from Bill Rivers.

Bill Rivers: Thank you. And I thank the members of the committee and the panelists who have remained and the members of the committee have remained for hearing out the public comments. I also want to thank our

PART 5 OF 6 ENDS [02:40:04]

Bill Rivers: ... For hearing out the public comments. I also want to thank our interpreter. I would point out that she's apparently been working for more than three hours without break and that is in fact not best practice. ASL interpreters are supposed to work in 15 minute shifts. You should have two interpreters. It's actually quite interesting. Oh, I see a second one, but I haven't seen you yet. It's been about two hours since, since I've only seen one interpreter. And I have relatives in Hollywood who are seamstresses and costumers and hairdressers, so I appreciate the words of the Yartsy. I also know that several members of the committee have left. And there have been a number of statements put into the record that I want to address, but the people who made those statements are no longer here. So yes, I am a member of the class of aggrieved translators and strippers as Ms. Friedman noted in the last meeting. And you're going to hear from us. At least from the translators, I don't speak for the strippers.

Bill Rivers: First large companies and the language industry. 17% of the 27 billion dollar US language industry actually comprises large businesses. 83% are small businesses. So it is not the case. Absolutely not the case as Ms. Gonzalez insisted, that large businesses dominate this industry. Second, learning English and I'm going to correct Mr. Chiu on this explicitly. If you show up at a hospital and you don't speak English or your English isn't strong enough, like my Armenian in-laws who live in West LA, and if they go to the hospital in their eighties, they're going to need language access. They don't have time to learn

English in order to get language access. So I'm going to put that on the record because in fact language access is a civil right. And I would encourage the committee, now of course professors Pastore and Renteln have left us. So again, this is addressed at them. I'm sorry Clare, I didn't see you there. You might have dropped off a bit, I was checking the list of-

Clare Patore: I would also note that we will have the transcript of these remarks.

Bill Rivers: Yes. Very good.

Clare Patore: People who had to leave because of the schedule end time. That does not mean they were not-

Bill Rivers: I'm sorry. You're taking my time, ma'am. So it lends a perception frankly, that the committee cannot manage its time because we had people go on at great length and that these remarks are important. Language access is a civil right under multiple Supreme court cases, Lauvy Nichols Castaneda, et cetera. Executive order 13166, which interprets title six of the prohibition against slang, a national origin discrimination under title six of the civil rights act as extending to discrimination based on language status. Section 1557 of the patient protection and affordable care act. The state court interpreters, every state has requirements for certification qualifications for court interpreters, the federal court interpreter certification act, multiple California state laws starting with Dymally Alatorre bilingual services act passed in 1973. There are second and third order consequences of AB5.

Bill Rivers: And yes, we have a strong position on AB5, but I would remind the committee that it is somewhat convenient to limit the discussion to merely the consequences for the workers, but not necessarily the other consequences for the provision of other civil rights. And then finally, as to a number of the suggestions and requests made by Mr. Chiu and Ms. Gonzalez, there are other legislative remedies available. Just because you're an employee, yes there's a sort of di minimus requirement depending on the state of unemployment insurance and worker's compensation insurance, no guarantee of healthcare. No guarantee depending on the state and municipality of paid leave, sick leave, family medical leave, et cetera. So there are other legislative remedies available that I would encourage the commission to explore. And with that, I end my remarks. Thank you.

Brooke Peery: Thank you. Next we're going to hear from JoBeth McDaniel. JoBeth, go ahead.

JoBeth McDaniel: Hi. Yes. Thank you. The panel and the speakers and especially to Star Parker, who's the only person who brought up the vast majority of us who are self-employed by choice. The Bureau of Labor Statistics puts that at 80%. I've testified to this commission before, you have that study I believe. I also wanted to correct a few things that I heard, a few of many things. Dynamex, we actually had some of the people in our coalition who worked there, was not more strict

than AB5. The court decision was wage orders only. It exempted seasonal workers, it exempted temp workers, AB5 does none of that. AB5's ABC test basically says, if you are in the same business as the person hiring you, you are an employee unless you get an exemption. And as people pointed out groups with the lobbyist doctors got exemptions, nurses did not. Respiratory therapists did not. Who knows how those decisions were made anyway.

JoBeth McDaniel: And the other thing about Dynamex, the case, is that because it was wage orders most professionals were exempted. This comes from the state of California fact sheet on AB5 that was written by Lorena Gonzalez. So I'm not quite sure why she kept saying that Dynamex was more strict than AB5 because obviously it was not. A few other things, Massachusetts does have an ABC test. The attorney general said it was unenforceable 20 other states have a form of an ABC test that are a very narrow type of ABC test. There is nothing like California AB5's ABC test out there. It's been a travesty. California already had a law on mis-classification SB459, that Jerry Brown signed into law in, I believe it was 2011 to take effect in 2012.

JoBeth McDaniel: One of the things that has come up is about civil rights. Well and study, after study, after study, the vast majority of people who are self-employed want to be self-employed, as I said. And the new businesses that have been started in the past two years have been predominantly started by women. Have been predominantly within that group, started by women of color and especially black women. Black women have started new businesses in the past two years at twice the rate of white men. I really hope the commission will ask why. Just why? Why Ms. Gonzalez said that there wasn't this great rush to self-employment, but actually study after study, after study shows that yes, we are-

Brooke Peery: The end of your time, if you want to wrap up your last statement.

JoBeth McDaniel: Yes. I'll wrap up. We're the fastest growing segment of the workforce. We're one third of the workforce and there are good reasons for that. And AB5 has hamstrung California and harmed so many people. Thank you.

Brooke Peery: Thank you. Next we're going to hear from Mike Bradley. Mike, go ahead.

Mike Bradley: Thank you. I was a contractor in Silicon Valley for more than 25 years. I was also a contract advisor and grievance officer for an organization representing freelance writers. But today my head is spinning because there's been so much discussion here about whether independent contractors should be reclassified. And so little discussion of whether the standards and procedures and regulations of AB5 deny us our civil rights, especially those of us who are in protected classes. I think there's just been too much here that's not on point. I'm sorry, I don't think these hearings have moved the needle and I hope you'll try again. Thank you.

Brooke Peery: Thank you. Next we'll hear from Brisa Johnson. Brisa, go ahead.

Brisa Johnson: Hello everybody. My name is Brisa Johnson and if it's not noticeable, I am a black woman. I am the director of the San Diego Black Worker Center here in San Diego. And it's an organization fighting for a more equitable economy for black workers across the diaspora. And advancing the black worker justice movement specifically through organized people power and policy advocacy. So I'm speaking to you all today to urge the members of the California Advisory Committee, to actually recognize how vital AB5 is in protecting workers across California, specifically workers of color like myself who have been taken advantage of due to systemic racism and anti-human rights. AB5 actually creates protection and fairness for workers whose employers have exploited and taken advantage of them for decades, specifically some of the most vulnerable community members, including women and especially black and brown communities. AB5 is actually very critical to the advancement of all working people, because it's actually holding employers accountable to fair wages, labor rights, civil rights and worker justice.

Brisa Johnson: In addition, misclassification has actually robbed millions of workers and employment law protections, and deprives federal and state governments of billions in tax revenues. That could be going to the general fund. The Black Worker Center actually believes in upholding AB5 and the protection it grants to misclassified workers. It is actually a critical step forward for workers, especially black workers like myself and the black workers that we represent to guarantee them overtime pay, unemployment insurance, workers compensation, paid sick days, family leave and discrimination and sexual harassment protections. Something that me as a black woman have experienced one too many, 18, 20, 30 times in my career. Black people have built this country with free labor and anyone working to dismantle worker protections under AB5 is actually working against the interest of the black community and probably has already benefited from the basic civil and human rights AB5 is advocating for.

Brisa Johnson: I believe most people who have been advocating against AB5, receive unemployment insurance, workers comp, paid sick days, family leave and probably have a livable wage to sustain themselves. On behalf of the Black Worker Center, I actually urge you to reinforce and support AB5 and the protections for misclassified workers, and help us to hold these employers accountable and to ensure safe and equitable workspaces for black and marginalized workers in California. Because even if it was a black business, I would still want this black woman who's running a business, to treat her workers with fairness, to provide her workers with paid sick days, to provide the women that work for her with paid family leave, to provide discrimination and sexual harassment protection. So we can have the argument that businesses are being created and these businesses also still need to be upholding the law for worker rights. Thank you for your time.

Brooke Peery: Thank you. Next we're going to hear Doug Bloch. Doug, go ahead.

Doug Bloch: Good afternoon. My name's Doug Bloch and I'm with the Teamsters. We were actually the first integrated union at the turn of the last century. And by the time the original Jimmy Hoffa marched with Dr. King, Teamsters were the highest paid blue collar workers in the United States. When trucking was deregulated in 1980, that began to erode. Over a half a million truck drivers lost their jobs in the first 10 years, as this model of mis-classification rose from the ashes. We've been fighting it for decades long before there was Uber and Lyft. Just ask tens of thousands of immigrant truck drivers at our California ports, where multiple studies have likened them to United Nation of indentured servants. Still today in California a person of color with a high school education, even with a criminal background can get a job at our largest employer UPS and make a \$100,000 a year, with fully paid family health insurance and retire with a pension.

Doug Bloch: Most UPS part-timers are women of color who enjoy that same fully paid family health insurance. And UPS just enjoyed their most profitable year in company history. Dynamex was a package delivery company that competes with UPS and undermines those jobs. AB5 was an attempt to take the Dynamex ruling and make a uniform test across all the labor codes, so it wasn't confusing for workers and employers. How can you be an employee for purposes of overtime, but not for workers comp. We met with the trucking industry and the gig economy companies in an attempt to find solutions, but the problem was we could never assure our employers and our members or any workers, that they would not be undercut by some new business model. So thank you very much for your consideration. I look forward to hearing some of the other testimony from people calling for public comment.

Brooke Peery: Great. And that concludes our online public comment queue. So now we will move to our people who are joining us on the phone. Again, if you want to press star three, that'll indicate that you have a comment to make. So currently we have four people on the phone who want to make a comment. If I could just start out by, if you could unmute yourself and give me your first and last name. And then I'll call on you one by one to make your comment. Let me also unmute you on this end. Sorry about that. Press star six, if you're having trouble unmuting yourself. And also make sure you're unmuted on your actual phone.

Chris Nielsen: Chris Nielsen.

Brooke Peery: Chris Nielsen.

Beverly: Hi, this is Beverly Yu, with BDW.

Brooke Peery: Beverly, what was your last name?

Beverly: Yu.

Brooke Peery: Yu, great. Who else is on the phone and would like to make a comment?

Sandra: Sandra Barro from CSEA.

Brooke Peery: Right. Who else do we have?

Sandra: Did you get me Sandra Barro ?

Brooke Peery: Yes, Sandra. I have you. Thank you.

Sandra: Thank you.

Brooke Peery: All right. Last call for our people on the phone. Again, that's star six to unmute yourself and also make sure you're unmuted on your phone set.

Onyx Black: Hello, Onyx Black.

Brooke Peery: Great Onyx black. Last call, I believe that's everybody who has their hand raised. Okay, great. Chris, we're going to start with you. Go ahead, you have three minutes.

Chris Nielsen: Great. Thank you so much for the opportunity to speak. My name is Chris Nielsen and I'm the assistant director of education for the California Nurses Association, National Nurses United. Our union represents over a 100,000 registered nurses across California. And we view efforts to reign in misclassification as critical to protecting our patient's health, protecting the nursing profession and advancing our union's broader fight for racial gender and economic justice. Nurses have a legal and ethical duty to advocate for their patients. Misclassified workers, who we all know are disproportionately women, immigrants and workers of color, face greater risks of negative health outcomes due to job instability, inadequate pay, unsafe work environments and lack of health insurance and other protections as we've heard today.

Chris Nielsen: Nurses work tirelessly to provide quality care for those workers when they show up at the bedside as patients. But we must also address the social and economic determinants of health impacting those workers and AB5 provides an essential means of doing just that. AB5 is also crucial bull work against the efforts of healthcare employers and tech firms and venture capitalists who are currently seeking to expand the gig economy into our industry, to mis-classifying nurses and other healthcare workers. And that would further devalue their work, it would degrade the quality of care that they're able to provide and ultimately relegate to second class status the women and workers of color who make up the vast majority of the healthcare workforce.

Chris Nielsen: The industry has been using the nurse staffing crisis, which I'm sure you've all heard of as a pretext to shift to non-union app based staffing platforms that misclassify their workers. But this crisis is the result of decades of systematic under staffing in our industry. And mis-classification would only exacerbate it by degrading patient care conditions, adding to the burnout and moral injury that

nurses have endured throughout the pandemic and magnifying the health and safety risks that nurses face, especially the nurses of color who make up 25% of the profession nationwide, but account for 48% of the nurses who died of COVID 19.

Chris Nielsen: And the decline of unionization that's associated with mis-classification would undermine nurses collective ability to right those wrongs. Companies that misclassify workers promise flexibility and freedom through the independent contractor status. But instead, what nurses want is to protect their safety and yes, their freedom, which is guaranteed by a union contract to provide their patients and communities with the care that they need. So CNA strongly urges the California Advisory Committee to recognize as nurses do, that AB5 ABC test has made it easier to check mis-classification and maximize the number of workers who benefit from labor and civil rights protections in California. And to recognize that those protections are critical to protecting healthcare workers, ensuring safe and equitable care for our patients and building a healthy future for all Californians. Thank you so much for the time.

Brooke Peery: Thank you. Next. We're going to hear from Beverly. Beverly, go ahead.

Beverly: Thank you. Good afternoon, committee Beverly Yu, with UDW AFSCME local 3930. We represent over 150,000 providers in the California care economy. UDW has worked with medical interpreters since 2010 documenting issue, interpret... Can you hear me?

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

Beverly: Okay. I just heard a message on my phone. Okay, great. UDW has worked with medical interpreters since 2010 documenting issues on the interpreter services industry and advocating for a statewide language access program for Medicaid recipients. We want to cover important considerations for the interpreter services industry in California, the underscore the need for strong, independent contractor regulations, such as AB5. Mis-classification is an ongoing widespread problem in interpreter services industry. This is an industry built by the labor of women of color, most of whom are immigrants, who are professionals with years of education providing interpretation and language translation services in a medical environment. The majority of workers in contact with our organization, more than 300 workers report waste staff, misreported hours, and companies that take many months to pay hours work. Most companies on the industry require interpreters to work set hours with set requirements, in violation of the state independent provider standards, directly impacting a majority of women of color workforce.

Beverly: An interpreter services company, language world services reports that they paid over a \$100,000 in fines. The California department's labor before switching from an independent contractor model to employee model. This is an example of employer who admitted wrongdoing. These practices that harm workers are

standard operating principles in the industry. And the medical interpretation industry, misclassified interpreters are often exposed to life threatening illnesses, such as COVID 19, have no access to workers compensation or unemployment insurance. Medical interpreters often report high levels of insecurity and fear working as misclassified workers, in a medical environment with patients.

Beverly: A lack of standards for interpreters who are often sourced from Craigslist and other informal sector sources of workers, is a dangerous problem in a medical environment where life and death decisions are often made. Patient safety requires medical interpreters to have consistent training and standards that are hard to maintain in an independent contractor relationship. VW supports decision made in Dynamex and AB5 urge the committee recognize these important protections. Interpreting agency supply interpreters to medical offices, hospitals and other healthcare settings of primary work. In many cases, indirect violation of the ABC test. We appreciate the comments made by city attorney Chu and chief officer Gonzalez, and the opportunity to comment today. Thank you.

Jennifer Friedm...: Thank you. Next we're going to hear from Sandra. Sandra, go ahead.

Sandra: Thank you. Good afternoon, Sandra Barro on behalf of the California School Employees Association. CSEA represents school paraeducators, a majority of which are women of color. And despite the physical, mental and emotional demands of being a para educator, these positions are paid close to minimum wage. Fortunately, unionized paraeducators are afforded job security and other employment benefits not provided to independent contractors. For example, paraeducators are often injured on the job depending on the student population they serve, fights are common and I've represented members who've had chairs or other objects thrown at them. School employees can utilize sick leave, workers comp or disability if they need time off to recover. And as the union members, para educators salaries and jobs are protected from gender and racial discrimination.

Sandra: It's no surprise that during the current staffing shortage school districts are having trouble recruiting for these low wage and typically part-time positions. As a result, some districts have contracted with hiring agencies to fill para educator positions. This practice devalues the work of paraeducators, again, who are predominantly women of color. Instead of increasing pay or hours to help recruit employees, a district can contract with an agency that doesn't provide benefits or job protections to its workers. For low wage workers, particularly women of color, the benefits of employment and the security of a union, means they can pay rent and feed their families when something unexpected happens. The solution to the staffing shortage isn't to utilize independent contractors, the solution is to pay paraeducators more and ensure workers who are subject to gender and racial discrimination receive the protections they need. Thank you.

Brooke Peery: Thank you. And next we're going to hear from Onyx Black. Onyx, go ahead.

Onyx Black: Oh, thank you. Hi, my name is Onyx Black and I represent a group called Artists for the Revolution. And what we are is the most marginalized strippers and sex workers out here, mostly in Southern California. I represent transgender workers, black workers, disabled bodies, homeless people, larger bodies. Me, myself I am a dark skinned, older stripper. And due to AB5 when it started and was enacted, I have spoke before, but I want to speak personally about what has happened to me before I spoke on behalf of my group. 50% of all strippers had got fired in the last three years due to AB5. And you may say, "Why is this the case?" Well, the thing is as independent contractors you can hire a slew of them. You can only hire so many employees. We live in a racist world, right? They're only going to hire who they think is the best.

Onyx Black: It's not the large body, it's not the older and it's not the black. With this as well being an employee as a stripper, you are not safe. You don't have any privacy because now you're on books as working at the angel, boom, boom room. When before you had that privacy and after college, you can go get a legitimate job. With this people are not understanding that this is causing more danger. With this and 50% of all strippers being fired, most of us were forced into survival sex work. And that is super dangerous since this is a civil rights committee. And thank you for even having this investigation. All of you should understand that doing survival sex work is not nearly as safe as being in the strip club. Everybody needs to understand as us being strippers and being the most marginalized, we are not a monolith of workers.

Onyx Black: Some of us need independent contractorship, just like some of us need employees status. As a black person, we are not a monolith, not all of us need to be employees. Some of us want to have the legitimacy of being an independent contractor and self-employed. With this, what our group is asking, Artists Revolt, is asking for a choice in this. Some people want to be employees that is fine. Some people want to be unionized, that is fine. But some of us need the freedom of independent contractor ship.

Onyx Black: And I'm begging of you guys to understand that some of us with these jobs, the reason why we need this freedom, is because some of us are disabled. Like me I have endocrine disorder. If I can't work for two weeks and I don't call my job, so what? It's flexible. I have that choice. Under employment status, I don't care what everybody is saying. You don't have that choice. You have no wiggle room like that. What I'm urging y'all to understand is that some of us are suffering under AB5, tremendously. Being older, being black, being one of these types of people. And that's all I got to say today. And thank you for letting me speak.

Brooke Peery: Thank you. And we will hear from our last public commenter, Derek Robinson. Derek, go ahead.

Derek Robinson: All right. Thank you. My name is Derek Robinson with the center on policy initiatives and we urge [inaudible 03:08:05] recognize the economic and civil rights implications of assembly bill five. AB5 helps really kind of level the playing field for marginalized workers, particularly women, black people and other workers of color. It strengthens employment protections for hundreds of thousands of workers who have previously been deprived of their rights under California law. Estimates are that mis-classification impacts up to 30% of contracted workers and this cost has stayed over \$3,300 per worker in lost tax revenue annually. Eliminating mis-classifications of workers is critical to our fight for economic and racial justice for California's working families.

Derek Robinson: And mis-classification, disproportionately harms workers of color. Studies have shown that the trend is prevalent in the janitorial services, construction and trucking industries. These industries consist mostly of black and Latino workers and have some of the lowest wages in California, especially in the San Diego region where these industries also maintain the highest rates of labor law violations, including wage theft. So the marginalized workers making up these industries, could substantially benefit from the employment protections provided by AB5. So we strongly encourage and urge the California advisory committee to the US commission on civil rights to formally acknowledge that. By adopting the ABC test and strengthening the legal test for employment, California has made it easier to target mis-classification and maximize the number of workers who benefit from labor and civil rights protections under California law. Particularly women and workers of color who need these legal protections the most. Thank you.

Brooke Peery: Thank you. And that concludes our public comment for today, Brian.

Brian Moriguchi: Okay. I want to thank all the panelists and members of the public for attending and sharing their thoughts and opinions with us. We greatly appreciate it. I also want to thank our two ASL interpreters, I want to thank them for joining us today. And I apologize for us going quite a bit over our scheduled time, but we appreciate your service. The transcript and other materials will be available within 30 days following this meeting. If you provided your email address when you joined, we will send you follow up information regarding how to access these materials. We will also notify you when the committee is meeting for follow up discussion and when the report will be available.

Brian Moriguchi: The record will remain open for a minimum of 30 days after today's meeting. If anyone would like to submit written comments, please send this by email to Brooke Peery, at bpeery@usccr.gov. We do have another panel discussion if you'd like to join us on June 15th at 1:30 PM. So that concludes our meeting for today. And again, I want to thank all of you for joining us today and we will see you at our next meeting. Thank you.

Christopher Yos...: Thank you, Brian. Good to see everybody.

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Brian: Thank you, Brian.

Christopher Yos...: Thanks everyone.

Brian Moriguchi: Bye bye.

PART 6 OF 6 ENDS [03:11:24]