



October 12, 2020

The Honorable Eugene Scalia
Secretary, US Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Re: Proposed Rule: Independent Contractor Status under the Fair Labor Standards Act, RIN 1235-AA34

Dear Secretary Scalia,

We are the co-founders of a nonpartisan, ad hoc coalition formed in 2019 to stop anti-independent contractor laws such as California’s disastrous AB5 and its regressive 1930s ABC Test from spreading to other states and at the federal level. We now represent several thousands independent contractors—many of them from Democratic-controlled states including New York, New Jersey, Massachusetts, Illinois and Washington—who want to keep our chosen careers as independent contractors.

The vast majority of independent contractors share our desire to remain independent contractors. Research repeatedly shows that 70% to 80% of independent contractors want to remain classified as such and not be forced to seek employee-status jobs; that we are happier the way we are now working; and that the majority of us earn as much as, or more than, we would earn if we were forced to seek traditional W2 jobs. This research has most recently been published by the U.S. Bureau of Labor Statistics,¹ IRS/U.S. Treasury,² ADP

¹ “Contingent and Alternative Employment Arrangements News Release,” U.S. Bureau of Labor Statistics, June 7, 2018

² “Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data,” IRS/U.S. Treasury, July 2019

Research,³ Edelman,⁴ Gallup,⁵ MBO Partners,⁶ Contently⁷ and FreshBooks Cloud Accounting.⁸

Even during the biggest economic crisis since the Great Depression, our view remains the same. Data collected during this year's Covid-19 pandemic confirms that most independent contractors want to remain independent contractors. In fact, 60% say no amount of money would persuade us to seek traditional W2 jobs.⁹ We have more flexibility, make the same amount or more money, and have multiple streams of income when we're classified as independent contractors.

Therefore, we are writing to support the U.S. Department of Labor's efforts to protect our current classification by suggesting the new rule for independent contractor status under the Fair Labor Standards Act. We agree with what you wrote, Secretary Scalia: "There are powerful reasons why some workers prefer to be independent, rather than accountable to a company as its employee."¹⁰

Thank you for listening to the majority of independent contractors like us. We sincerely hope this new rule will help elected officials realize that badly misguided laws such as California's AB5, based on the 20th-century ABC Test, do more harm to the economy than good. We need 21st-century thinking to protect 21st-century careers.

Sincerely,

Karon Warren, Kim Kavin, Jen Singer
Co-founders, Fight For Freelancers USA
www.fightforfreelancersusa.com

³ "Illuminating the Shadow Workforce: Insights into the Gig Workforce in Businesses," ADP Research, February 2020

⁴ "Freelance Forward 2000," Edelman Intelligence/Upwork, September 2020

⁵ "Gig Economy and Self-Employment Report," Gallup/Quickbooks, 2019

⁶ "State of Independence in America 2019," MBO Partners, 2019

⁷ "We Polled 573 Freelancers About AB5. They're Not Happy," Contently, January 2020

⁸ "Women in the Independent Workforce, 2nd Annual Report," FreshBooks Cloud Accounting, 2019

⁹ Edelman/Upwork

¹⁰ "Clarity for 'gig workers' – Proposed rule simplifies definition for contractors, businesses," Eugene Scalia, Fox Business, September 22, 2020