



January 27, 2021

To: The Honorable Charles Schumer, Senate Majority Leader  
The Honorable Mitch McConnell, Senate Republican Leader  
The Honorable Patty Murray, Chair, Senate HELP Committee  
The Honorable Richard Burr, Ranking Member, Senate HELP Committee  
The Honorable Ron Wyden, Chair, Senate Finance Committee  
The Honorable Charles Grassley, Ranking Member, Finance Committee  
United States Senate Washington, D.C. 20510

The Honorable Nancy Pelosi, Speaker of the House of Representatives  
The Honorable Kevin McCarthy, House Republican Leader  
The Honorable Robert “Bobby” Smith, Chair, Committee on Education and Labor  
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor  
The Honorable Richard Neal, Chair, Committee on Ways and Means  
The Honorable Kevin Brady, Ranking Member, Committee on Ways and Means  
United States House of Representatives Washington, D.C. 20515

Dear Members of Congress:

It is time to guarantee that Americans who choose self-employment are protected in that choice. Independent contractor work has been a form of respected and legitimate work in the United States since the nation’s founding, and the U.S. Congress must rebuff attacks led by the AFL-CIO on this all-American way of life.

We are members of the nation’s independent contractor workforce, which includes as many as 57 million Americans.<sup>1</sup> We represent a grassroots, nonpartisan, ad hoc coalition with members all across the United States, and we are asking that you work with us to protect our right to continue earning a living as self-employed, independent business owners.

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<sup>1</sup> “Freelancing in America,” Upwork, 2019

This week, we were encouraged to read the letter the AFL-CIO and others sent to you, suggesting that you consider laws affecting “people who work for a company through an app.”<sup>2</sup> This is different messaging than the all-out attack the AFL-CIO in particular has waged since 2019 on independent contractors all across the country. Their prior messaging proposed enacting regressive, 1930s ABC Test legislation that would outlaw most careers among the 70-85% of us who repeatedly say we want to remain independent contractors.<sup>3</sup> We understand Congress may be pressured to enact legislation specific to app-based drivers working for companies like Uber. According to research by a member of President Biden’s transition team, such workers comprise less than 1% of the U.S. workforce,<sup>4</sup> and, according to JPMorganChase, such workers represent less than 5% of independent contractors.<sup>5</sup> Enacting outdated, anti-independent contractor legislation such as the ABC Test to try to solve a perceived problem with such a small group of workers is, as *The New York Times* reported, like “killing cockroaches with a cannon.”<sup>6</sup>

Congress must acknowledge the economic destruction that followed this regressive ABC Test when it was enacted in California. That state’s Assembly Bill 5 (AB5) law took effect on January 1, 2020, and has not had any appreciable effect on creating traditional jobs or bolstering unions. Instead, it has ruined independent contractors’ lives.

As California’s own nonpartisan Legislative Analyst’s Office reported just one month after the state’s ABC Test law went into effect, its primary result was destroying the income and careers of as many as 1 million residents.<sup>7</sup> *Forbes* reported that women-owned businesses, in particular, were “reeling” from this ABC Test law,<sup>8</sup> an outcome that makes perfect sense once you realize how many women are now choosing independent work for the flexibility it provides, along with an escape from traditional workplace glass ceilings and sexism. In

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<sup>2</sup> “Letter to Congress on Labor Protections for App-Based Workers,” National Employment Law Project, 1/25/21

<sup>3</sup> “Contingent Workforce: Size, Characteristics, Earnings, and Benefits,” U.S. Government Accountability Office, April 20, 2015; “Contingent and Alternative Employment Arrangements News Release,” U.S. Bureau of Labor Statistics, June 7, 2018; Gig Economy and Self-Employment Report,” Gallup/Quickbooks, 2019; “State of Independence in America 2019,” MBO Partners, 2019; “Women in the Independent Workforce, 2nd Annual Report,” FreshBooks Cloud Accounting, 2019; “Illuminating the Shadow Workforce: Insights into the Gig Workforce in Businesses,” ADP Research, February 2020; “Freelance Forward 2000,” Edelman Intelligence/Upwork, September 2020; “We Polled 573 Freelancers About AB5. They’re Not Happy,” Contently, January 2020

<sup>4</sup> “A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The Independent Worker,” The Hamilton Project, December 2015

<sup>5</sup> “Measuring the online platform economy,” JPMorganChase, October 2018

<sup>6</sup> “California wanted to protect Uber drivers. Now it may end up hurting freelancers,” *The New York Times*, December 31, 2019

<sup>7</sup> “The 2020-21 budget: Staffing to Address New Independent Contractor Test,” California Legislative Analyst’s Office, February 11, 2020

<sup>8</sup> “California’s AB5 leaves women business owners reeling,” *Forbes*, January 19, 2020

2019, the IRS and US Treasury issued a report<sup>9</sup> detailing that since 2001, the number of female breadwinners who are also independent contractors is up 90%. In other words, anti-independent contractor laws like the ABC Test disproportionately harm women.

That's the last thing women need right now, with so many becoming economic victims of the Covid-19 recession.<sup>10</sup> As U.S. Sen. Elizabeth Warren, D-Mass., recently said on CNN, "The pandemic has really set women back, and make no mistake, this is not something that women are going to recover from in just the space of a few months or even a few years. This will have lifetime consequences. And women are getting hit in every direction."<sup>11</sup>

Also, there is the racism of ABC Test laws. That's the word—*racist*—that Benjamin Chavis Jr., former NAACP CEO and current CEO of the National Newspaper Publishers Association, used to describe California's ABC Test law.<sup>12</sup> Countless other Black leaders in the state rose up during 2020 to urge voters to pass Ballot Proposition 22 to gut AB5.<sup>13</sup> The head of the California Black Chamber of Commerce equated the ABC Test law's effects on the Black community to the burning of "Black Wall Street" in Tulsa, Oklahoma a century ago.<sup>14</sup> That's the kind of economic harm this ABC Test causes.

We strongly urge Congress to reject the 1930s ABC Test approach that harmed so many people in California, and to instead follow the lead of states like Virginia, which moved its laws to the modern IRS Test. Congress also should heed the words of New Jersey State Sen. Linda Greenstein—a Democrat and 20-year veteran of the New Jersey Legislature—who noted "an amazing amount of opposition" to the ABC Test there.

We want to work with you to create common-sense, modern-day solutions that protect all workers: employees and independent contractors alike. The ABC Test is not that solution. Congress must invite independent contractors into the conversation about these laws.

Particularly distressing, based on the letter you received this week, is that you are being led to believe that organizations such as the National Writers Union (until recently, an arm of the United Auto Workers) and the Freelancers Union (which recently hosted a one-sided YouTube event featuring AB5's sponsor) represent professional freelance writers—who

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<sup>9</sup> "Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data," IRS, U.S. Treasury, University of Michigan, New York University, July 2019

<sup>10</sup> "Twenty-five percent of women could leave the workforce because of the pandemic," *Nautilus*, September 2020

<sup>11</sup> "Elizabeth Warren said the pandemic has derailed many women's careers, leaving behind lifetime consequences," *Boston.com*, January 24, 2021

<sup>12</sup> "Black Riders Matter," *Los Angeles Sentinel*, August 27, 2020

<sup>13</sup> Yes On 22 Coalition

<sup>14</sup> "Statement of California Black Chamber of Commerce on California Efforts to Shut Down Gig Economy," June 25, 2020

comprise more than 60% of all the writers in the United States.<sup>15</sup> ***These organizations do not speak for professional freelance writers.***

Instead, the largest organization in America that represents nonfiction freelancers is the American Society of Journalists and Authors, which is suing the State of California over the constitutionality of its ABC Test law. The grassroots, nonpartisan group California Freelance Writers United was formed to stop the damage of the ABC Test law to writers' careers there. And our grassroots, nonpartisan, ad-hoc coalition Fight For Freelancers was formed by freelance writers in New Jersey to ensure that California's ABC Test law didn't spread to the East Coast and outlaw our careers, along with the careers of our members who are musicians, physical therapists, graphic designers, doctors and more.

As the leaders of Fight For Freelancers, we welcome the opportunity to meet with you and share the resources and feedback we have amassed from independent contractors nationwide. Our Congressional representatives must ensure that all people, including America's independent contractors, are protected in their choice of how they want to work. Every American requires meaningful representation at the table for this legislative conversation. That includes independent contractors like us.

We look forward to working with you all in the months ahead to present our ideas, and to ensure that America's laws are fair to us all.

Sincerely,

Kim Kavin, Jen Singer, Debbie Abrams Kaplan, Lisa Volpe Yakomin and Karon Warren  
Co-leaders, Fight For Freelancers USA  
[www.fightforfreelancersusa.com](http://www.fightforfreelancersusa.com)

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<sup>15</sup> U.S. Bureau of Labor Statistics, data retrieved January 26, 2021