



February 15, 2022

The Honorable Joe Manchin
The Honorable Kyrsten Sinema
Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Manchin and Sinema,

We are writing to you on behalf of our nonpartisan, grassroots, ad hoc group Fight For Freelancers, which recently organized and led a coalition representing more than 250,000 independent contractors in filing [an amicus brief](#) that defends the right to choose self-employment.

Today, we are asking you to oppose the nomination of David Weil as wage and hour administrator at the U.S. Department of Labor, and to ensure that the ABC Test to determine independent contractor status never makes its way into any federal law, regulations or policies.

The four women who lead our all-volunteer group, along with several members from West Virginia and Arizona, would like to meet with you to explain why [we are so terrified](#) about the very real possibility of our livelihoods being destroyed. We know this is an atypical request. We are not registered lobbyists. We're just everyday citizens who, until 2019, were not actively engaged in legislative advocacy at all.

But then, California passed Assembly Bill 5 with an overly restrictive ABC Test to determine independent contractor status. That law sparked a series of events that taught us all just how hard we needed to fight to keep our small businesses.

The State-Level ABC Test Fight

Immediately after California passed its ABC Test law in 2019, independent contractors we know began to lose their livelihoods. Their clients, fearing government fines even for relationships with legitimate independent contractors, began to sever ties, sometimes ending business relationships that had endured for a decade or longer.

Then, New Jersey, where three of our four co-leaders live, tried to ram through a copycat bill during a short, lame-duck session. We didn't want what was happening in California to happen to us, so we formed Fight For Freelancers, which quickly grew to thousands of members. We wrote op-eds and letters in all the [state's newspapers](#) (and a couple of [regional](#) and [national](#) ones), made a [series of videos](#), appeared on every radio and TV show that would have us, and drove to the Statehouse—for the first time in our lives—to testify against the bill.

That day, independent contractors from all kinds of professions testified against the ABC Test bill for nearly five hours. Some were visibly shaking. Others cried, begging lawmakers to stop threatening their livelihoods. Some tried, through Spanish-English translators, to emphasize their points despite challenging language barriers.

State Senator Linda Greenstein, a Democrat who has served in the New Jersey Legislature for two decades, called the amount of opposition to the ABC Test bill “amazing.” State Senator Joseph Lagana, a Democrat who had said at the start of the hearing that he thought the bill would protect independent contractors from exploitation, stated at the end of the hearing, “We have to do our best job to ensure that those traditionally independent classes of employees will remain independent, and that those who wish to remain independent, that their voices can't be stifled.”

We have since found that when we have the opportunity to show lawmakers how we work and why we prefer self-employment, they realize that they need to protect us *from* the ABC Test, and from those deeply misguided individuals like Mr. Weil who have long sought to severely restrict the choice of independent contractor work.

The Fight at the Federal Level

On [the day that we learned](#) our efforts had made a difference, and that the New Jersey bill was dead, many members of Fight For Freelancers burst into tears of relief. But the very next day, we learned that lawmakers in the U.S. House of Representatives were [preparing to advance a federal bill](#), the PRO Act, with this same career-killing ABC Test.

We felt betrayed and exhausted, but we shifted our efforts from New Jersey to the whole country. Independent contractors from all across the nation joined us as they, too, began to understand just how much harm this ABC Test could do to us all. We continued to speak out however we could, this time at the national level. We wrote [more op-eds](#), created a new [series of videos](#), produced [a series of articles](#), and contacted lawmakers nationwide.

This month, we led a coalition of groups representing a quarter-million independent contractors in filing an [amicus brief](#) with the National Labor Relations Board, laying out the case for why self-employment must be protected from overly restrictive standards like the ABC Test. We wrote this brief ourselves. We filed this brief ourselves. Not a single penny changed hands during its creation. This was a work by real people, for real people, and on behalf of all the real people who simply prefer to earn a living as independent contractors.

As we state in the brief's conclusion: We need an independent contractor standard "that affords even *more protection* to the choice of independent contractor work ... [regulators] should respect the will of these people who have purposefully, consciously and voluntarily rejected the traditional employer-employee relationship."

David Weil's Nomination

We have pored over [David Weil's book](#) and [his other writings](#) about independent contractors. We have seen [his praise for California's destructive ABC Test law](#). We have been shocked by his incorrect beliefs about how the profession of freelance writing, in particular, works. We can tell you—with the four of us having earned our living as freelance writers for a century, collectively—that what Mr. Weil *thinks* is happening in our careers, and what is *actually* happening in our careers, are two completely different things.

Put simply: A person who does not understand who independent contractors are, and who does not seem able to conceive of anyone intentionally choosing self-employment, cannot be placed in a position to wield a policy hammer that could destroy our livelihoods.

As many as [59 million Americans](#) earn income as independent contractors. [Study after study shows](#) that 70% to 85% of us are happy and want to remain independent. As our [amicus brief explains](#), this desire is especially pronounced among self-employed women, including the women who comprise about 80% of the members of Fight For Freelancers.

If confirmed, Mr. Weil would join a U.S. Labor Department already led by individuals whose ideas about self-employment are, quite simply, detached from our reality. Those [department leaders](#) include Associate Deputy Secretary Julia "Nikki" McKinney. We spoke directly with Ms. McKinney when she was [labor policy director](#) for U.S. Senator Patty

Murray, after we requested a meeting about the need to remove the ABC Test from the Protecting the Right to Organize Act, of which Senator Murray is the primary sponsor. We explained to Ms. McKinney that, based on what happened in California, the best-case scenario for small-business owners like us under the PRO Act's restrictive ABC Test would be going from being our own bosses with 30 clients a year, to being employees with 30 different part-time bosses. To any rational human being, the thought of having to answer to 30 different part-time bosses is laughable, yet Ms. McKinney told us she had no problem with that outcome.

Ms. McKinney is now serving in the U.S. Labor Department with Secretary Marty Walsh and Deputy Secretary Julie Su. Mr. Walsh has made no secret that [he favors the idea of reclassifying independent contractors as employees](#), in defiance of the wishes of most independent contractors themselves. Ms. Su supported the California ABC Test law that destroyed the careers of independent contractors all across that state, and used her position in state government [to actively promote that law](#).

The thought of adding a profoundly misguided anti-independent contractor ideologue like Mr. Weil to this mix is nothing short of alarming.

For all these reasons, we respectfully request that you oppose the nomination of David Weil to be wage and hour administrator at the U.S. Department of Labor. We would also appreciate the chance to speak with you about the urgent need to remove the ABC Test from all proposed federal legislation, and to ensure its rejection from any federal regulations or policies going forward.

Sincerely,

Kim Kavin
Debbie Abrams Kaplan
Jen Singer
Karon Warren

www.fightforfreelancersusa.com