



**Testimony to the U.S. Commission on Civil Rights  
California Advisory Committee**

**Hearing: “Civil Rights Implications of AB5:  
Gig Worker & Independent Contractor Rights”**

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Good morning to the committee and thank you for inviting me to participate.

My name is Patrice Onwuka, and I am the director of the Center for Economic Opportunity at Independent Women’s Forum. My work focuses on expanding opportunities for women, particularly women of color. It is my honor to appear today to explain how Assembly Bill 5 (AB5) has denied women the freedom to pursue flexible work and the hardships that denial has caused, and to caution other states as well as the federal government from adopting a similar policy.

IWF is a non-profit, non-partisan 501(c)(3) organization that promotes policies that expand liberty, encourage personal responsibility, and limit the reach of government. I speak on behalf of two of IWF’s policy centers, the Center for Economic Opportunity and the Women’s Law Center. The CEO develops and advocates for common-sense policy solutions, grounded in data, to expand workplace choice, flexibility, freedom, and opportunity. Independent Women’s Law Center advocates—in the courts, before administrative agencies, in Congress, and in the media—for equal opportunity, individual liberty, and respect for the American constitutional order.

Let me begin by celebrating how innovation is transforming the U.S. economy and creating a labor market full of opportunities that women desire and depend upon. Outdated models of work that require workers clocking in, being strapped to a desk or station for eight hours, and heading home frustrated and exhausted, are disappearing. Workers across the labor force are increasingly reclaiming control over their schedules, choosing their clients, negotiating their own pay rates, and shaping their work-life around the priorities that are important to them. They find a better quality of life, better health outcomes, and more fulfillment.

Independent contractors have long been a part of our workforce. However, technology has expanded freelancing beyond the realm of highly-skilled workers. On-demand tech platforms connect workers willing to perform a task to one-time or regular contracting opportunities in the gig economy. They may work full-time or part-time and earn a living or supplement their incomes

Today, about **1 in 5 jobs** in America is held by an independent contractor, and that proportion is expected to grow. **MBO Partners** estimates that between 2020 to 2021 the number of independent workers grew from 38 million to 51 million. The pandemic made independent contracting all the more critical. They noted that “large numbers of workers who were furloughed, or sent home, or forced to work remotely during the pandemic began to rethink what work means to them, how it should define (or not define) their lives, and where it should be done. Across the board, people are seeking better work-life balance, shorter commutes, greater flexibility, and the ability to pursue their passions. This has translated into what analysts have dubbed The Great Resignation.”

In the **State of Gig Work 2021** report, Pew Research found that 16% of Americans did gig work using an online platform in 2021 such as driving for a ride-hailing app, shopping for or delivering groceries and household items, performing household tasks or running errands, making food deliveries, and delivering packages.

Women and minorities are well represented in freelancing. Women now comprise over half (55%) of new freelancers according to the **MBO Partners**, up from 46% in 2020. According to Pew’s **study** of online gig platforms, 30% of Hispanic adults, 20% of Black adults, and 19% of Asian adults have earned money through an online platform compared to 12% of White adults. This is a noticeably higher proportion than the larger **U.S. population** where blacks comprise 13% of the population, Hispanics 19%, and Asians 6%.

Millions of Californians choose to freelance in the “gig” economy. A **UC Riverside School of Business** analysis of app-based drivers in the state found that from fourth-quarter 2020 to third-quarter 2021, about 1.37 million drivers drove or delivered goods and services using either across the DoorDash, Instacart, Lyft, and Uber platforms in California. Some 44% were female and a significantly higher share was African-American/Black compared to the overall workforce.

## Women’s Labor Force Participation in Gig Work

According to **Patricia Mullins** of the Wisconsin School of Business at the University of Wisconsin-Madison, three categories of women typically go into freelance or contract work: “(1) At-home parents looking to fill their free time and continue their skills or learn new ones; (2) those who want income to supplement the salary of their spouse, who already carries the benefits of a traditional job; and (3) those who are working multiple jobs and picking up side gigs to support their family on one income.”

Researchers Liya Palagashvili of the Mercatus Center at George Mason University and Paola A. Suarez of the Stillman School of Business at Seton Hall University **examined** women’s participation in gig work focusing on the types of freelancing work women engage in. They found that women self-select into jobs that exhibit greater independence, allow more freedom to make decisions,

are less structured for the worker, and have shorter workweeks. They also found that female workers are attracted to independent work in which establishing and maintaining interpersonal relationships are of high importance. For example, the caregiver website, Care.com had a 95% share of women in 2013. A whopping 87% of sellers on Etsy were female whereas 14% and 27% of Uber and Lyft drivers, respectively, were female.

Control over their work and flexibility are two key motivators for women who freelance as compared to the rigid model that is part and parcel of being a full-time employee. According to [GrowTal/Opinium survey](#), 48% of freelancers were motivated to pursue freelance because of the ability to make decisions for themselves, rather than at an employer's discretion. Two-thirds (65%) of freelancers said they were motivated to pursue freelance because it provides flexibility to manage their own time, making this the number one motivator. According to Upwork's 2021 report, [The Great Resignation](#), of employees considering resigning, 20% are considering freelancing and of those 73% cite the ability to work remotely or flexibly as a reason why. When [surveyed](#), women in the gig economy named flexibility (44%), income (38%) and building a business (25%) among the top three reasons they gig. The report noted that "Flexibility is important to 94% of women in the gig economy" and that "Women with children of any age were more likely to indicate "flexibility" was "extremely important" than they were to indicate "income" was "extremely important.""

Surveys indicate that women and workers find other benefits to independent work. Independent workers can negotiate greater earnings. Many use gig work as an opportunity to supplement their regular income, or that of their household. But according to [U.S. Treasury Department research](#), growth in independent contracting is concentrated among women whose primary source of labor income is from independent contractor earnings (as opposed to a secondary source of income). These workers are their households' primary earners and are in the bottom of the income distribution. Independent contractors understand that they forgo benefits and wage guarantees that traditional employees enjoy such as overtime, paid leave, and minimum wages. Yet, they choose to be independent for other reasons.

Relatedly, freelancers increasingly indicate that they experience less risk and greater security than traditional employment. The pandemic has particularly reinforced this view. [Two out of three](#) full-time independent workers believe they are more secure than traditional workers. Under lockdowns and the economic turbulence of the pandemic, workers found that traditional jobs could not be counted on.

In addition, women discover greater fulfillment and positive health outcomes as independent workers. Nearly half (46%) of freelancers depend on contract work because personal circumstances such as health issues and family obligations prevent them from working traditional jobs. For example, a California rape victim who survived a murder attempt by her attacker suffers severe mental and emotional issues that prevent her from sitting behind a desk for long periods and interacting with people. She has been able to provide for her family while managing her own health through independent contracting.

Surveys indicate that independent workers experience great happiness and better health outcomes. A whopping **87%** of workers said they were happier working independently and 78% indicated that they were healthier.

Flexibility was important prior to 2020, but in light of the coronavirus pandemic, the benefit of working at the time and location of one's choosing—whether for one's health, to care for ailing relatives, or to care for children at home—is a premium that many traditional jobs do not offer.

## **The Harm of Forcing Independent Contractors into Traditional Employment Arrangements**

Prior to 2018, a flexible multi-factor standard determined whether a worker could be classified as an independent contractor. In the 2018 *Dynamex Operations West, Inc. v. Superior Court of Los Angeles, Cal.*, the California Supreme Court replaced this standard with a rigid, three-pronged “ABC” test in which all three of the following conditions had to be satisfied for a worker to be an independent contractor: (a) The worker is free from the control and direction of the hirer in connection with the performance of the work in question; (b) The worker performs work outside the usual course of the hiring entity's business; and (c) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work in question. For many freelancers such as writers, caterers, medical personnel, and many others, the (b) prong is most problematic.

In 2019, the California legislature codified the ABC test by passing Assembly Bill 5 (AB5). The law, which took effect January 1, 2020, requires that employers prove they meet the ABC test for their workers to be lawfully classified as independent contractors.

AB5 applied to most independent contractors in the state when first passed. According to the [California legislature's legislative Analysis Office](#), roughly 1 million workers were expected to be affected by the passage of AB5. Because the business they work for would no longer be able to treat them as independent contractors, proponents assumed the businesses would hire these workers as employees. That proved to be an incorrect and costly misunderstanding of business and economics, as thousands of these workers found themselves out of jobs. While subsequent legislation exempted over one hundred occupations from AB5, many more workers still remain under its ABC test.

IWF believes that AB5's forced reclassification of workers who have *chosen* to pursue their livelihood as independent contractors rather than as “employees” denies these workers the freedom to work independently and to be their own bosses. The law is particularly harmful to women, who represent the majority of workers in certain gig sectors, and many of whom value flexibility and independence over traditional employment benefits. Therefore, IWLC filed an amicus brief in [The People of the State of California vs. Maplebear Inc. \(DBA InstaCart\)](#).

In the gig economy specifically, the employee-employer model does not work and would have driven these businesses out of the state had voters not approved a ballot measure to exempt gig economy

companies from AB5 by a **59-41% margin**. As we explained in our brief: “platforms such as Instacart simply do not function in a manner commensurate with an employment relationship between the platform company and its workers. These apps establish an online marketplace for users to find one another and to transact for services. For numerous reasons, California’s state labor and employment laws often are incompatible with this independent-contractor based business model, particularly where work is platform-based. If forced to reclassify these workers as employees, it is likely that platform-based companies in particular will dramatically reduce, if not eliminate entirely, their operations in the State of California.”

In addition, the administrative burden of implementing AB5 on gig economies would be burdensome for the companies and the independent contractors using the platforms to earn income. “Many gig economy workers “multi-app,” completing tasks for several platform-based companies each day. Which, if any, company must provide the required breaks? If a multi-apping worker uses their car to perform services for numerous companies for various purposes throughout the day... which company or companies must reimburse mileage and other business related expenses? These difficult legal questions will inevitably arise, and the state labor code carries very serious consequences for potentially “wrong” answers. As a result, companies wishing to avoid this potential liability are likely to prohibit “multi-apping,” reducing worker flexibility and discretion, and ultimately, reduce their demand for labor.

Since its implementation, AB5 has wreaked havoc on California freelancers causing them to lose their livelihoods and incomes. Workers across industries have been vocal about the hardships of this legislation: **handymen, freelance writers, film and media professionals, interpreters and translators, art therapists, camera operators, golf caddies, private teachers and tutors, casting directors, mall Santas**, and so many more.

Workers reported losing income, such as **Rona Prestler**, a mother of two, who “relied on freelancing to earn a full-time income from home since 2016” but says she lost half of her clients as a result of AB5.

They also lost the flexibility to work while balancing other priorities. A freelance optometrist, who identified herself as “**Nancy P. O.D.**,” reached out to IWF because as a result of AB5, her income was slashed by almost 30 percent. She worked part-time so that she could raise her two boys. “Being an IC optometrist has given me the flexibility and the income to have the best of both worlds, a fulfilling career and be present for my children.” That was jeopardized by AB5.

In addition, the reclassification of independent contractors has unintended consequences for people who are served by independent contractors. Phlebotomist **Kathy Seress**, who performs life insurance exams, lost her independent status under AB5. The law also interfered with her ability to continue freelancing work instructing on how to use medical devices and as a technical support provider. She lost work and the ability to train others for work.

AB5 has been justified on grounds that lawmakers needed to protect workers from being misclassified. This is largely a solution in search of a problem and a solution that triggered far

worse hardship than anything it remedied. In survey after survey, freelancers indicate that they choose to be independent contractors, not employees of the companies they work for. In Pew's [survey](#) of the gig economy, a majority (62%) say the most appropriate way to describe ride-hailing drivers is as independent contractors providing a service on behalf of the apps or websites. According to a [MIT Sloan Management Review](#) report, 82% of part-time freelance contractors and 76% of full-time freelance contractors consider themselves to be free agents. [ADP Research](#) found just before the pandemic that more than 70% of 1099-M gig workers are working independently by their own choice, not because they can't find a "traditional" job. According to the [US Bureau of Labor Statistics](#), 79% of independent contractors preferred their arrangement over a traditional job. In addition, more than [three in five](#) (62%) freelancers agree that independent contracting was a personal decision; they do not think that government should classify them as an employee.

## Stories of BIPOC Women

*Jennifer O'Connell is a writer, yoga instructor, and career reinvention coach.*

"With her heart set on screenwriting, the then 22-year-old traveled to sunny California to obtain her master's degree. She marketed herself as a writer for about 20 years. Then, when the recession hit in 2008, O'Connell realized she had a "special set of skills" to help people who lost their jobs "reinvent themselves". Soon after, the entrepreneur was dabbling in writing, coaching, and another of her passions: yoga. Thus her brand and website, "As The Girl Turns" was formed.

"It didn't matter what time I did work because I was talking to schools across the world," she said in an interview with IWF. "That allowed me flexibility during my day to go teach my regular [yoga] classes for my part-time W-2 job and then come back and maybe work on an article, do interviews, or work on yoga certifications." Most of O'Connell's work was completed with 1099 forms.

"But her world turned upside down when California passed Assembly Bill 5 (AB5), commonly referred to as the "gig worker bill".

"O'Connell describes it as "a horribly written law".

"There are a lot of things about the law that don't work," she said. "The odds are stacked against the majority of creative people like writers and artists whose work involves collaboration with other artists."

"Suddenly, O'Connell's 1099 work was slashed. That used to make up about three-quarters of her income.

"Take my yoga work, I do lectures on anatomy or I help with a portion of training. A mom-and-pop studio can't hire me and put me on payroll for a one or two hour lecture that I do once per month. That's wiped out so much work. A lot of studios have shut their doors because of AB5 and COVID-19."



***Monica Wyman is a florist.***

“Two decades ago during the Great Recession, Wyman couldn’t find a job. She had three young children, a ten-year lapse in work experience, and no college degree. After being turned down by her local Starbucks, she eventually convinced a small flower shop to hire her at minimum wage. “I loved it,” she said. “I’m somebody who entertains and hosts frequently, and the flowers and parties were appealing to me.”

“After watching her boss decline requests for private events, Wyman decided to pursue her own slice of the American dream. In 2009, she founded RSVP Floral Designs, a small business that makes flower arrangements for weddings and other special events.

“The flexibility of working for herself enabled Wyman to contribute to her family’s finances while still being the primary caregiver for her children. It also allowed her to take a step back from working in 2016, when she faced a three-year battle with breast cancer.

“Because weddings are sporadic and seasonal, Wyman didn’t have enough work to hire traditional employees. She instead would hire moms as independent freelancers ahead of big events.

“I would rotate in different moms who I knew wanted a few hours here and there. It worked really well for all of us,” she said. “These are women who need the flexibility.”

“Under AB5’s strict conditions, however, Wyman’s entire business model is in danger.

“I don’t even have the words to explain how bad this has been for our family,” Wyman said of AB5. “I’m at this crossroads where I’m thinking I’m going to have to dissolve my business and close my doors.”

***Jennifer Santiagos is an interpreter.***

“Shortcomings in the bill can still jeopardize the livelihoods of thousands of professional interpreters.

“I learned Spanish as a second language beginning in 9th grade, majored in it in college and served for three years as a missionary in Nicaragua. In 2012, I became nationally certified by the Certification Commission for Healthcare Interpreters, a signal of expertise for interpreting in health care settings. Over the years, my clientele grew to include 30 to 40 language service entities that contract with me for intermittent two- to three-hour assignments.

“As a freelancer, I set my own professional fees and cancellation policy. I decide which assignments to accept or decline. This allows me time to provide preventive self-care to manage bipolar disorder, which was diagnosed in college, and to care for my young family...

“I am not misclassified or mistreated. I am on good, professional terms with interpreting agencies with whom I do business. Imposition of employee status knocks the wind out of my dream and destroys what I have built.

“At least 75% of professional interpreters and translators are independent contractors. Not only is our profession built on this model, but also most language professionals greatly value the flexibility and variety this affords.”

## Implications of AB5

AB5 has been devastating for working women and should not be a model for any other state or national policy. Currently, the ABC test is included in the House of Representatives-passed bill, the Protecting the Right to Organize Act (PRO Act) as well as the Worker Flexibility and Small Business Protection Act. President Biden campaigned on the [promise](#) of working “with Congress to establish a federal standard modeled on the ABC test for all labor, employment, and tax laws.”

Establishing the ABC test as the national standard would spread the harmful effects of AB5 across the country, eroding labor force attachment and denying women and workers the freedom to pursue the flexible opportunities that they choose and depend upon. It is an ill-advised policy that should not be replicated in any other state or at the national level.