

Written Testimony of Kim Kavin
For the hearing titled “Freedom to Work: Unlocking Benefits for Independent Workers”
U.S. Senate Committee on Health, Education, Labor & Pensions
July 17, 2025

Thank you, Chairman Cassidy and Ranking Member Sanders, for the chance to speak on behalf of America’s tens of millions of independent contractors today.

My name is Kim Kavin. I’m from New Jersey. My parents were public schoolteachers, and I grew up in a proud union household. I earned a journalism degree from the University of Missouri, and I had staff jobs at newspapers and magazines until I was about 30. That’s when I realized some freelancers were earning more than I was. It’s one reason I chose to go freelance 22 years ago.

Now, I’m 53. Freelancing is one of my best life choices. When Gallup says two-thirds of Americans want to be their own bosses, I get it.¹ You can count me strongly among the 80% of independent contractors who prefer this way of working.²

It was alarming to all of us, in 2019, when California passed Assembly Bill 5. The claim was that AB5 would stop employee misclassification—but it went way beyond that. The regulatory language hurt independent contractors across more than 600 professions.³

When New Jersey tried to copy AB5, some friends and I created a coalition called Fight For Freelancers. We packed our State House for a standing-room-only public hearing where we testified for more than four hours straight.

¹ Jeffrey M. Jones, “Desire to Be Own Boss Widely Held in U.S.,” Gallup, June 6, 2024

² Contingent and Alternative Employment Arrangements, U.S. Bureau of Labor Statistics, November 8, 2024

³ Freelancers Against AB5, list of affected professions, available at <https://thelibreinitiative.com/wp-content/uploads/2021/04/Freelancers-Against-AB5-List-of-600-Affected-Professions-002.pdf>

Women. Men. People of all races, ages. People who had voted for you, Senator Sanders, as well as for President Trump. All of us stood shoulder-to-shoulder, fighting for our freedom to earn a living.

We won. And ever since, we've been fighting to stop this lunacy nationwide.

I respect people who choose traditional jobs and unions—but I do not see that same respect being given to independent contractors. Instead, we're being forced to fight the PRO Act in Congress. We had to sue the U.S. Labor Department.

And our friends in California are still suffering. AB5 is such a disaster that:

- Governor Gavin Newsom's former deputy chief of staff said: "It's truly horrific how many people are negatively impacted by it."⁴
- The Trump administration's Deputy U.S. Labor Secretary called it "catastrophic."⁵
- Members of the California Advisory Committee to the U.S. Commission on Civil Rights warned that it "disproportionately and negatively affects women, immigrants, people of color, and the politically powerless."⁶
- A California Assemblyman is asking the U.S. Department of Justice to investigate.⁷

⁴ Yashar Ali, @yashar on X, January 6, 2020, "Parts of California's AB 5 make it one of the most destructive pieces of legislation in the past 20 years. It's truly horrific how many people are negatively impacted by it."

⁵ U.S. Deputy Secretary of Labor Keith Sonderling, "America must lead on the gig economy — or others will set the rules," *Washington Examiner*, June 10, 2025

⁶ Members of the California Advisory Committee to the U.S. Commission on Civil Rights, "The Impact of California's AB5 on Marginalized Communities: Examining the Evidence and Recommendations for Further Study," December 2024

⁷ California Assemblyman Tri Ta, "Vietnamese women are the victims of unjust, discriminatory labor laws in California," *The Orange County Register*, June 13, 2025

It's just bad policy. California's pace of job creation has tanked by 81%.⁸ Union membership went down.⁹ Self-employment for affected professions took a 10.5% hit; overall employment dropped too.¹⁰

And right now, the State of New Jersey is trying to create AB5 on steroids. Attorneys say a proposed rule "almost entirely eviscerates" any chance of being an independent contractor¹¹—while the state itself says the rule won't create a single job.¹²

This is not targeting employee misclassification. This is weaponizing regulatory language to attack independent contractors.

We just had another public hearing in Trenton, and it was standing-room-only. Again. For more than three hours. In a heat wave.

- The chief legal officer at Prudential—with headquarters in Newark for 150 years—said what's happening may be impossible for them.
- AAA's witness said it could jeopardize public safety by impairing roadside towing.
- The president of the Bi-State Motor Carriers—who's sitting right behind me today—said this would cripple the Port of NY&NJ.

It went on and on. And there was a new talking point: "This is not unions versus independent contractors." But just as we see at this table here today,¹³ every single witness

⁸ Jonathan Lansner, "California job creation dropped 81% after pandemic," *The Orange County Register*, April 3, 2025

⁹ U.S. Bureau of Labor Statistics, "Union Members in California—2024," February 27, 2025

¹⁰ Liya Palagashvili, Paola Suarez, Christopher M. Kaiser and Vitor Melo, "Assessing the Impact of Worker Reclassification: Employment Outcomes Post-California AB5," Mercatus Center, George Mason University, January 31, 2024

¹¹ Richard Reibstein, "Garden State May Soon Become Even Less Hospitable to Independent Contractors Than the Golden State," Troutman Pepper Locke, May 1, 2025

¹² Proposed New Rules: N.J.A.C. 12:11, ABC Test: Independent Contractors, available at https://nj.gov/labor/assets/PDFs/Legal%20Notices/Notices%20of%20Proposal/57%20N.J.R.%20894_a_.pdf

¹³ Scheduled witnesses in Washington are Timothy J. Driscoll, president of the International Union of Bricklayers and Allied Craftworkers; and Karen Friedman, executive director of the Pension Rights Center, who said in an October 17, 2023, speech that "The Pension Rights Center has worked with the ARA and the AFL-CIO and its affiliated unions for decades." This speech is available at: <https://pensionrights.org/wp-content/uploads/2023/11/231017-Karen-Friedman-ARA-Speech.pdf>

for this in New Jersey was employed by unions or affiliated with organizations that have strong union ties. I listed them in my written testimony, and I can provide video.

I also detailed how some of their so-called “research” is highly questionable. Some of it seems purposely mischaracterized, including in a government report.

You’re going to hear a lot today about how employee misclassification is wrong. That’s true. But it’s equally wrong to reclassify independent contractors right out of business.

We shouldn’t need a law to protect our freedom to be our own bosses, but here we are. Please, pass the Modern Worker Empowerment Act and end this madness, once and for all.

New Jersey 2025 Public Hearing

A public hearing was held June 23, 2025, about the proposed independent-contractor rule from the New Jersey Department of Labor & Workforce Development. Testimony included the fact that what New Jersey is proposing will be even more harmful than what California did with AB5, because in California, the Legislature ultimately granted partial or full exemptions to more than 100 professions following public outcry and leading up to a ballot measure where voters exempted app-based rideshare and delivery drivers, too. New Jersey’s proposal includes no such exemptions for any professions.

The American Action Forum estimates that 1.7 million New Jerseyans earn some or all of their income as independent contractors.¹⁴ This includes highly successful freelancers who out-earn their full-time W-2 counterparts. An April 2025 report from Upwork described such independent contractors, who earn exclusively through freelance work, as

¹⁴ Isabella Hindley, “State Level Costs of the PRO Act—Update,” American Action Forum, May 10, 2023

reporting “a median income of \$85,000, surpassing their full-time employee counterparts at \$80,000.”¹⁵

To be clear: The solution to overly restrictive independent-contractor policy is not professional exemptions. California’s method of playing favorites with exemptions for some professions, but not for others, is now facing allegations of discrimination based on gender and ethnicity in federal court.¹⁶ As Assemblyman Ta in California recently wrote to U.S. Attorney General Pam Bondi: “Ensuring equal treatment under the law is a fundamental principle of our democracy.”¹⁷

Further to that point, members of the California Advisory Committee to the U.S. Commission on Civil Rights wrote in their December 2024 report about how the exemption process played out in California with AB5:

The evidence of the influence of the powerful union lobby on the seismic change in the classification paradigm is clear in the exemption process. The California legislature essentially outsourced the decision-making process for obtaining an exemption from AB5. The result was the politically powerful and those in industries not historical targets of organized labor were more readily able to obtain an exemption.¹⁸

There is overwhelming evidence in New Jersey that the union lobby is attempting to exert undue influence with regard to independent-contractors policymaking in the Garden State, as well. At the public hearing in Trenton, witness testimony was 3-to-1 against the

¹⁵ Gabby Burlacu and Kelly Monahan, “The Future Workforce Index: Evolving Talent Trends in 2025 and Beyond,” Upwork, April 23, 2025

¹⁶ Suhauna Hussein, “Vietnamese American salon owners sue California alleging labor code is discriminatory,” *Los Angeles Times*, June 2, 2025

¹⁷ David N. Young, “Assembly member Tri Ta calls for federal investigation to alleviate discriminatory practices,” *Event-News Enterprise*, March 13, 2025

¹⁸ Members of the California Advisory Committee to the U.S. Commission on Civil Rights, “The Impact of California’s AB5 on Marginalized Communities: Examining the Evidence and Recommendations for Further Study,” December 2024

Department's proposal. The only witnesses who testified in favor of this proposal were either employed by unions, or affiliated with organizations that have strong union ties:

- Eric Richard, legislative director for the New Jersey AFL-CIO
- Michael Broderick, president of Teamsters Local 469 and general executive board member of Joint Council 73 for the Teamsters
- Bernie Corrigan, president of the International Brotherhood of Electrical Workers Local 102
- Abby Adams, government affairs director for the Associated Construction Contractors of New Jersey, which represents and promotes the interests of the union construction industry
- Debbie White, president of Health Professionals and Allied Employees, the largest health-care union in New Jersey
- Jennifer Mancuso of the New Jersey Laborers Union, or LIUNA
- Brandon Fishbaum of Carpenter Contractor Trust, which supports union contractors
- Paul Prendergast with the Eastern Atlantic States Regional Council of Carpenters, a council of the United Brotherhood of Carpenters and Joiners of America union
- Alan Schorr of the National Employment Lawyers Association, whose Washington, D.C. office address is c/o AFL-CIO 815 Black Lives Matter Plaza NW
- Joseph Niver of Make the Road New Jersey, whose staff is organized with the United Auto Workers Union 2320¹⁹
- Maya Pinto of the National Employment Law Project, a union-backed think tank,²⁰ who previously worked at the Service Employees International Union²¹

¹⁹ @mrnjunion bio description on X

²⁰ InfluenceWatch, retrieved July 6, 2025

²¹ Maya Pinto biography, National Employment Law Project, available at <https://www.nelp.org/person/maya-pinto/>

- Jake Barnes of the Workplace Justice Lab at Rutgers University, whose stated mission on its homepage includes support for unions²²

Mancuso, of the New Jersey Laborers Union, introduced a Spanish-speaking worker and his English-speaking translator, who sat directly next to her as a suggestion that the worker also supported the proposed rule. However, per the translator, this worker did not express support for the proposed rule. Instead, the worker testified: “The DOL is investigating my workplace for numerous violations, including misclassification.”

In other words, his testimony made clear that the proposed rule is unnecessary in order to address suspected cases of employee misclassification like his.

Fight For Freelancers also urges careful scrutiny of the testimony given at the public hearing by Mr. Richard of the AFL-CIO; Mr. Broderick of the Teamsters union; Mr. Barnes of the Workplace Justice Lab at Rutgers University; Ms. White of Health Professionals and Allied Employees; Mr. Schorr of the National Employment Lawyers Association; and Ms. Pinto of the National Employment Law Project.

Specific concerns about each individual’s testimony are detailed below.

Eric Richard Testimony

Mr. Richard of the AFL-CIO testified that: “The loss of tax-lock dollars to the state due to misclassification is staggering. We refer you to the initial task force report that outlines these numbers.”

The 2019 Report of Governor Murphy’s Task Force on Employee Misclassification (hereinafter, the “Task Force Report”) does, indeed, claim that the state lost significant tax revenue based on what the report describes as a “2000 U.S. Department of Labor study of misclassification in construction in New Jersey.” But the Task Force Report’s own footnote

²² <https://smlr.rutgers.edu/workplace-justice-lab-ru>

for the tax-loss claim does not cite any U.S. Department of Labor study. It instead cites a 2016 report by Stockton University's William J. Hughes Center for Public Policy.²³

Far from being a U.S. Department of Labor study, the Stockton University report's executive summary states that: "The William J. Hughes Center for Public Policy was contracted to study the underground commercial construction economy in the state of New Jersey for the Bricklayers and Allied Craftworkers Labor Management Committee of New Jersey, the Carpenter Contractor Trust, Associated Construction Contractors of New Jersey and Masonry Contractors of New Jersey."

Furthermore, there is a 2000 U.S. Department of Labor study about misclassification. It is colloquially known as the "Planmatics study," and its research was conducted in the 1990s,²⁴ about a decade before the iPhone was invented and laptop computers overtook desktops, freeing people to work from anywhere and for whomever they choose.

This antiquated Planmatics study's 196 pages include only two pages about New Jersey's construction industry. The three sources of information for those two pages in the Planmatics study are an unnamed person from the AFL-CIO; the head of a trade association who offers no data, statistics or research, but instead states that a company "not paying what they are supposed to pay has an unfair advantage"; and a 1999 *Star-Ledger* article that says New Jersey stopped misclassification in the construction industry back then by allowing tax auditors to work from the 20-factor test, which was a nickname for the IRS Test used to determine independent contractor status at that time.²⁵

²³ Oliver Cooke, Deborah Figart and John Froonjian, "The Underground Construction Economy in New Jersey," William J. Hughes Center for Public Policy, Stockton University, June 2016

²⁴ Planmatics, Inc. for the U.S. Department of Labor, "Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs," February 2000

²⁵ Dan Weissman, "Builder caught in state tax crackdown," *Star-Ledger*, February 18, 1999

Michael Broderick Testimony

Mr. Broderick testified that: “According to the conservative estimate by the U.S. Department of Labor, approximately 1.8 million workers were found to have been misclassified by their employers in New Jersey.”

The U.S. Department of Labor’s Planmatics study states, on page F-7, that the number of workers misclassified statewide in New Jersey was 322,435. This same figure is noted on page 65 of the June 2016 report from Stockton University that the 2019 Task Force Report cites as a source.

Mr. Broderick’s 1.8 million-worker claim would equate to 41% of New Jersey’s current workforce of 4.4 million people²⁶ being misclassified. Not even the Task Force Report alleges that such a high percentage of misclassified workers exists in New Jersey.

Jake Barnes Testimony

Mr. Barnes of the Workplace Justice Lab at Rutgers University testified that: “A 2018 Berkeley Labor Center study estimated that between 12.4 and 20.5% of New Jersey’s construction workforce was either misclassified as contractors or paid off the books.”

This data, per a footnote in a 2022 Berkeley Labor Center report,²⁷ in fact comes from a 2020 study supported by the United Brotherhood of Carpenters and Joiners of America, one of North America’s largest building trades unions.²⁸

²⁶ Press release, “New Jersey Exceeded 4.4 Million Jobs in February Setting New Record High,” New Jersey Department of Labor & Workforce Development, March 27, 2025

²⁷ Ken Jacobs, Kuochih Huang, Jenifer MacGillvary and Enrique Lopezlira, “The Public Cost of Low-Wage Jobs in the New Jersey Construction Industry,” UC Berkeley Labor Center, March 24, 2022

²⁸ Russel Ormiston, Dale Belman and Mark Erlich, “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry,” January 2020

Debbie White Testimony

Ms. White testified that: “While unions like ours are winning contracts with better wages, hours and working conditions like staffing ratios, and thereby bringing standards up even in non-union facilities, AI platforms provide a race to the bottom by rewarding the lowest-wage bids with no benefits. Gig nursing also destabilizes a workforce by relying on cheaper labor instead of hiring and retaining more staff.”

Ms. White’s union represents the nurses at University Hospital in Newark.²⁹ According to the contract that her union negotiated for use from October 1, 2021, through September 30, 2024, there was no problem with temporary nurses being hired at the hospital for up to 12 months at a time.

And the temporary nurses had no impact on existing nursing staff; the contract states that “regular full and part time nurses from a specific work unit or department shall not be laid off unless casual and temporary nurses’ positions are first eliminated.”

In addition, it was the union contract—which bears Ms. White’s personal signature—that ensured those temporary nurses only received reduced benefits or no benefits.³⁰

Screen shots from the contract are below:

²⁹ Dana DiFilippo, “Nurses at Newark’s University Hospital approve contract, dodging strike” *New Jersey Monitor*, October 12, 2024

³⁰ This contract is available for review at <https://www.uhnj.org/wp-content/uploads/2023/07/HPAE-5089-UH-CNA-2021-2024-signed.pdf>

4.05 Temporary and Casual Nurses

1. Temporary Nurse

Temporary nurses are hired for a specified period of time not to exceed twelve (12) months in the same position. If the position is filled by a temporary employee beyond the twelve (12) months, the position shall be posted for bidding or closed.

2. Casual Nurses

Casual nurses are hired to work on average less than twenty (20) hours per week within ninety (90) calendar days.

3. Health benefits

Casual and Temporary nurses are not eligible for any benefits except those required by law.

4. Benefit Time

Casual and Temporary Part Time nurses shall not be eligible for any time off benefit, except as required by law.

Temporary full time nurses shall be eligible for holiday, vacation and sick time pay upon completion of six (6) months of continuous employment.

5. Sick Time

Casual and Temporary Part Time nurses shall not eligible for sick time except as required by law.

6. Uniform Allowance

Casual and Temporary nurses shall not be eligible for Uniform Allowance.

7. Tuition Reimbursement

Casual and Temporary nurses are not eligible for tuition reimbursement.

In terms of financial compensation, the union contract's highest listed annual salary appears to be \$180,956, for advanced practice nurses. By comparison, according to a January 2025 report by the health-care staffing platform Nursa, from 2019 to 2023, pay rates for contract nurses doubled compared to pre-pandemic levels. Proluent Health reported a 67% increase in the advertised pay rate for travel nurses from January 2020 to January 2022. In some areas, pay rates for travel nurses surpassed \$240 per hour.³¹ The

³¹ Laila Ighani, "Understand the hidden costs of understaffing in nursing," Nursa, January 20, 2025

math is clear: A travel nurse who worked 40 hours a week for just 26 weeks per year at \$240 per hour would have earned \$249,600.

In March 2024, the health-care staffing agency AceStack reported that from 2020 to 2022, there were bidding wars for travel nurses, with “astronomical pay rates routinely exceeding \$5,000 to \$6,000 per week.” More recently, according to AceStack: “the average weekly gross pay for travel nurse assignments in early 2024 is around \$2,800 for a 48-hour week. This still represents a pay premium of 30-50% over commensurate permanent staff nurse positions at most facilities.”³²

For a travel nurse working 48 weeks per year, that \$2,800 per week amounts to \$134,400—which is nearly 15% higher than the minimum annual salary of \$117,000 that Ms. White’s contract guaranteed for some advance practice nurses.

These figures make it abundantly clear why, in September 2024, CNBC reported that: “Compared with permanent staff nursing positions, travel nurses enjoy more flexible contracts, opportunities for travel and higher salaries.”³³

Alan Schorr Testimony

Mr. Schorr testified: “These regulations do not create any new laws. They merely enforce what the Legislature has already passed. These regulations do not interpret the statute that is the province of the court.”

That testimony must be questioned, according to numerous top-ranking members of the New Jersey Legislature itself. On June 4, 2025, New Jersey state Senators Johnson, Zwicker and Lagana sent a letter to the Department, expressing concern that the Department’s proposal “departs from the existing statute and case law controlling worker misclassification.” That letter is reproduced below, in full:

³² “Travel Nursing in 2024: Pay Trends and What to Expect,” AceStack, LinkedIn, March 21, 2024

³³ Mike Winters, “Earning 6 figures, working 9 months a year, traveling the country: What it’s like to be a travel nurse, from those who have done it,” CNBC, September 1, 2024



NEW JERSEY STATE SENATE

June 4, 2025

Hon. Robert Asaro-Angelo
NJ Department of Labor and Workforce Development
PO Box 110
Trenton, NJ 08625

Re: PRN 2025-051 – ABC Test; Independent Contractors

Dear Commissioner Asaro-Angelo,

The Department of Labor has proposed a new set of regulations to clarify the application of the “ABC Test” in determining the employment status of independent contractors. As Chairs of the Senate Labor, Legislative Oversight, and Commerce Committees, we are supportive of the Department’s intent to protect workers’ rights and ensure a level playing field for employers across the state. However, upon reviewing the rule proposal we are concerned that it departs from the existing statute and case law controlling worker classification.

We thank you for extending the public comment period to August 6, 2025, and holding a public hearing on the rule proposal. Given the substantial negative impact that these regulations may have on thousands of independent business owners who are properly classified, and the extensive public interest that it has already raised, the public hearing will ensure that this important proposal receives the careful deliberation that it deserves.

We look forward to working with you on the rule proposal and other issues that are important to New Jersey workers.

Sincerely,

Handwritten signature of Senator Gordon Johnson in black ink.

Senator Gordon Johnson
Chair, Labor

Handwritten signature of Senator Andrew Zwicker in black ink.

Senator Andrew Zwicker
Chair, Legislative Oversight

Handwritten signature of Senator Joe Lagana in black ink.

Senator Joe Lagana
Chair, Commerce

Maya Pinto Testimony

Ms. Pinto's organization, the National Employment Law Project, issued a 2020 report³⁴ that relies in part on mischaracterized data from the 2019 Task Force Report, which itself mischaracterized the data in question.

The NELP study's appendix includes a table titled "Annual Losses Due to Independent Contractor Misclassification: Summary of Leading State Studies." In that table, the NELP report states that 38% to 42% of employers in New Jersey misclassify their workers. The NELP table's citation for that claim includes the Task Force Report.

The Task Force Report does, indeed, claim that the practice of misclassification "has increased by approximately 40% in the last ten years." Given that the report is dated July 2019, its claim is that the practice of misclassification rose 40% between 2009 and 2019.

However, the report's citation for that 40% claim is a *Harvard Business Review* article that instead states: "The use of independent contracting has grown dramatically over the past decade, with one estimate suggesting it has increased by almost 40%, going from 6.9% of employment in 2005 to 9.6% in 2015."³⁵

That 40% estimate, per the *Harvard Business Review* article, came from a National Bureau of Economic Research study that also states the years when independent contracting grew were not 2009 to 2019, but instead 2005 to 2015.³⁶

Neither *Harvard Business Review* nor the National Bureau of Economic Research claim that misclassification grew by 40%. They state that independent contracting grew by 40% between 2005 and 2015—years that include the Great Recession, which was the most severe economic downturn in the United States since the Great Depression. The Task Force

³⁴ "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," National Employment Law Project, October 2020

³⁵ David Weil, "Lots of Employees Get Misclassified as Contractors. Here's Why It Matters," *Harvard Business Review*, July 6, 2017

³⁶ Lawrence F. Katz and Alan B. Krueger, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015," Harvard University, Princeton University and NBER, November 13, 2018

and NELP reports, by mischaracterizing this data, simply erased this significant time period in our nation's history that clearly explains why independent contracting skyrocketed.

These are the facts: During the Great Recession, in a two-year span starting in December 2007, the unemployment rate rose sharply, from about 5% to 10%. In late 2009, more than 15 million people were unemployed. Total employment, as measured by the Current Population Survey, dropped by 8.6 million, or almost 6%.³⁷ Many people responded to losing their jobs in those years by turning to independent contracting so they could afford basic necessities. CNBC reported that freelancing during this time saw “explosive growth” and that professional freelancers were often earning more than the average hourly wage cited by the U.S. Bureau of Labor Statistics.³⁸

Put simply, NELP's study and the Task Force report conveniently deleted the reality of what happened in the years of the Great Recession, in an apparent attempt to make readers believe that the problem of misclassification had exploded, when in fact, people's attempts to earn income as independent contractors became widespread amid massive traditional job losses.

It should also be noted that the Task Force report cites NELP's 2017 research as the basis for its claim that “between 10 and 30 percent of employers misclassify at least one employee as an independent contractor.”

That 10% to 30% estimate, per May 2025 testimony by NELP's own Laura Padin before Congress,³⁹ comes from the antiquated Planmatics study whose research was done in the 1990s. However, NELP's leadership has made other claims about the source of this estimate, too. NELP's executive director, Rebecca Dixon, claimed in a 2024 *Newsweek* article that “a 2020 analysis” is the basis for this 10% to 30% claim.⁴⁰ The underlying research Dixon linked to from those words in her *Newsweek* article was not a 2020 analysis, but

³⁷ U.S. Bureau of Labor Statistics, “Great Recession, great recovery? Trends from the Current Population Survey,” April 2018

³⁸ Elaine Pofeldt, “Obama: Is the job of the future a freelance one?” CNBC, January 29, 2014

³⁹ Hearing, “Empowering the Modern Worker,” U.S. House of Representatives Committee on Education & Workforce Subcommittee on Workforce Protections, May 20, 2025

⁴⁰ Rebecca Dixon, “Gig Economy Corporations Shouldn't Get a Free Pass To Exploit Workers,” *Newsweek*, March 20, 2024

instead a 2009 Government Accountability Office report that states “the national extent of employee misclassification is unknown” and that cites data as old as 1984.⁴¹

Real-World Consequences

Such highly questionable data has already had serious consequences in New Jersey and at the federal level.

In New Jersey, the Task Force Report has been used to justify the enactment of 10 new laws, the creation of a state government office, and the granting of unprecedented powers for the state labor commissioner.⁴²

And, as noted above, data from this Task Force Report has made its way into studies by organizations such as NELP, whose staff regularly testifies before Congress and has been given significant influence over federal independent-contractor policymaking. The questionable 2020 NELP study was cited in NELP’s public comment supporting U.S. Department of Labor independent-contractor rule-making in 2022.⁴³ The U.S. Labor Department, according to a search, cited NELP a staggering 54 times in its final independent-contractor rule. By comparison, Fight For Freelancers, which filed a detailed public comment on behalf of independent contractors, was only cited 10 times in the Department’s final independent-contractor rule.⁴⁴

All of the questionable data and assumptions could explain why, even after anti-independent-contractor policies are put into place, regulators can’t seem to find anything even approaching the level of widespread employee misclassification that we’re all being told exists.

⁴¹ GAO-09-717, “Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention,” General Accountability Office, August 2009

⁴² New Jersey Department of Labor & Workforce Development, “NJ Labor Department Proposes New Rules to Address Statutory “ABC Test” for Independent Contractor Status,” April 28, 2025

⁴³ NELP public comment, available at <https://www.regulations.gov/comment/WH-2022-0003-53881>

⁴⁴ U.S. Department of Labor, Wage and Hour Division, “Employee or Independent Contractor Classification Under the Fair Labor Standards Act,” *Federal Register*, January 10, 2024

In New Jersey, at a state Senate Labor Committee hearing on March 10, 2022, Chairman Fred Madden, a Democrat, noted at one hour, eight minutes that when it comes to enforcing misclassification policy in New Jersey, Labor Commissioner Robert Asaro-Angelo had only taken action in 44 cases after the new laws had gone into effect.⁴⁵ And according to the New Jersey Department of Labor’s own April 2025 press release, the first-of-its-kind misclassification penalty had assessed money to be paid to only about 12,500 workers after nearly four years of focusing on misclassification.⁴⁶ Then, just days before this U.S. Senate hearing, the Department released new numbers that bumped up the 12,500 figure to about 13,000. The press release stated that the Department was marking the six-year anniversary of the Task Force Report, but the press release also quoted misclassification figures dating back to 2018, before the Task Force Report was even issued.⁴⁷

A similar phenomenon occurred at the federal level. On December 17, 2024, the U.S. Department of Labor announced that since January 2021—also after nearly four full years of prioritizing the issue of employee misclassification—it had recovered only about \$41 million in back wages for some 28,000 workers.⁴⁸ That was after lawmakers including Congressman Bobby Scott of Virginia, a lead sponsor of the PRO Act, had claimed that misclassification was a \$4 billion per year problem.⁴⁹

These results strongly suggest that the information being presented about independent contractors is wildly inaccurate; these Departments are incompetent in addressing employee misclassification; or both.

⁴⁵ The archived video of this hearing is available to view at <https://www.njleg.state.nj.us/archivedmedia/2022/SLA-meeting-list/media-player?committee=SLA&agendaDate=2022-03-1013:00:00&agendaType=M&av=V>

⁴⁶ Press release, “NJ Labor Department Proposes New Rules to Address Statutory ‘ABC Test’ for Independent Contractor Status,” New Jersey Department of Labor & Workforce Development, April 28, 2025

⁴⁷ Press release, “NJDOL Highlights Wins in Strengthening Worker Protections and Addressing Misclassification Under Murphy Administration,” New Jersey Department of Labor & Workforce Development, July 14, 2025

⁴⁸ Looman, Jessica, “Making an Impact for Misclassified Workers,” U.S. Department of Labor Blog, December 17, 2024. (This article has been scrubbed from the government website, but a screenshot is available at <https://www.freelancebusting.com/p/attention-doge>)

⁴⁹ Press release, Congressman Bobby Scott, “Scott Applauds Biden for Protecting Workers’ Workplace Rights,” January 9, 2024

A commonsense solution to this problem would be government officials actually inviting independent contractors to participate in independent-contractor policymaking, instead of allowing unions and union-affiliated organizations to take the lead.

In New Jersey, Governor Phil Murphy's Executive Order No. 25, which created the task force on misclassification, omitted independent contractors entirely, instead stating:

The Task Force shall consist of not less than twelve (12) members, as follows: three representatives from the Department of Labor and Workforce Development; three representatives from the Department of the Treasury; and one representative each from the Department of Law and Public Safety, the Department of Agriculture, the Department of Banking and Insurance, the Department of Human Services, the Department of Transportation, and the Economic Development Authority. The Commissioner or head of each department shall select the department's representative or representatives. All members shall serve at the pleasure of the appointing department and without compensation.⁵⁰

A similar minimization of independent-contractor views happened in Minnesota, where Attorney General Keith Ellison created an Advisory Task Force on Misclassification—but then included only a single independent contractor, who was wholly outnumbered by members of unions including the AFL-CIO, LIUNA, the North Central States Regional Council of Carpenters and the SEIU.⁵¹

The independent contractor on that Minnesota Task Force was Brittany VanDerBill, who is a member of Fight For Freelancers. She noted that witnesses invited to testify before that task force included a representative from NELP. She also noted serious concerns about data that seemed to be mischaracterized or nonexistent:

I repeatedly asked the task force and presenters for data when they described certain industries that are “highly impacted” by misclassification. I was told I’d get

⁵⁰ Press release, state Senator Troy Singleton, “Governor Murphy Signs Executive Order Establishing Task Force on Employee Misclassification,” May 3, 2018

⁵¹ Office of Minnesota Attorney General Keith Ellison, Advisory Task Force on Worker Misclassification, available at <https://www.ag.state.mn.us/Taskforce/Misclassification/>

that data but never got it, so I kept asking. I finally learned that there is no data—the task force is basing this classification of highly impacted industries on anecdotes and things they hear.

VanDerBill also noted that in Minnesota, business leaders, lobbyists and others referred to this task force as a “sham task force,” a “kangaroo court” and the “task farce.”⁵²

At the federal level, there has been similar union influence at hearings about the PRO Act that completely omitted independent contractor witnesses. An example was a March 8, 2023, U.S. Senate HELP Committee hearing whose witnesses were Liz Shuler, president of the AFL-CIO; Mary Kay Henry, international president of the SEIU; Sean O’Brien, general president of the International Brotherhood of Teamsters; John Ring, partner at Morgan Lewis & Bockius and former chairman of the National Labor Relations Board (which handles union issues, not independent-contractor issues); and Mark Mix, president of the National Right to Work Legal Defense Foundation (which handles employee issues, not independent-contractor issues).

The press release about that hearing issued by PRO Act sponsor U.S. Senator Patty Murray further made clear that the wishes of union organizers were being prioritized in the policymaking:

Today, during a Senate Health, Education, Labor, and Pensions (HELP) Committee hearing, U.S. Senator Patty Murray (D-WA), a senior member of the HELP Committee, joined her colleagues to hear from union leaders about the challenges workers face when exercising their basic right to organize, the role unions play in fight for workers’ rights and improving their benefits and working conditions, and the need to defend the right to organize.⁵³

⁵² Kavin, Kim, “The Lone Voice,” freelancebusting.com, January 9, 2025

⁵³ Press release, U.S. Senator Patty Murray, “At HELP Hearing, Senator Murray and Union Leaders to Discuss Need for PRO Act to Protect Workers’ Right to Organize,” March 8, 2023

Hearings in the U.S. Senate about legislation that affects independent contractors should have a majority of witnesses who are independent contractors—and who are representative of the fact that 80% of independent contractors prefer self-employment.⁵⁴

WHO DOES FREELANCE BUSTING HURT?

Freelance busting hurts non-English-speaking people who are sick or injured. They rely on independent certified medical interpreters like Ana Sikavica in New Jersey. She speaks Croatian, Serbian, Bosnian and Montenegrin—not exactly the kinds of languages most medical facilities can afford to have on staff in a full-time, traditional job.⁵⁵

Freelance busting hurts rape victims. In California, some forensic nurses provide sexual-assault medical evidentiary exams for medical facilities that can't have a forensic nurse on duty 24/7. Without this, victims' exams to help prosecute their rapists can be delayed.⁵⁶

Freelance busting hurts people who are experiencing a psychological crisis. In California, a healthcare professional had to let patients go after she could no longer be an independent contractor during evening time slots at a clinic for mental health and suicide prevention.

Freelance busting hurts deaf and hard-of-hearing people. Sarah Munro says she could no longer work as a freelance sign-language interpreter in California to help people access educational, healthcare and other services.

Freelance busting hurts military spouses. As Marisa Palmieri Shugrue wrote in Ohio, a quarter of military spouses are or have been self-employed.⁵⁷

⁵⁴ Contingent and Alternative Employment Arrangements, U.S. Bureau of Labor Statistics, November 8, 2024

⁵⁵ Ana Sikavica and Lyubov Gerasimova are examples from The Language Center in East Brunswick, N.J.

⁵⁶ This and other California examples are from the Freelancers Against AB5 compilation of personal stories available at: <https://rolls.bublup.com/Anderson/AB5-Personal-Stories>

⁵⁷ "Freelancers, including military spouses, will lose if PRO Act passes with 'ABC test,'" Marisa Palmieri Shugrue, Cleveland.com, April 2, 2021

Freelance busting hurts Ukrainian refugees, like the ones in New Jersey who turn to Lyubov Gerasimova for help in our legal system. She speaks to them in Ukrainian, Polish and Russian.

Freelance busting hurts the children of owner-operator truckers like Michael Bell who drop off the kids at school, do a run at the Port of NY&NJ, and then pick the kids up.⁵⁸

Freelance busting kills dogs and cats because consultants like Valerie Talcott Fausone can no longer work with large rescues and small shelters in California to improve death-row results.

Freelance busting hurts music lovers. As bandleader Bradley Madsen of East Orange, N.J. wrote, live music will all but stop if independent musicians aren't allowed to play together in various combinations across multiple venues.⁵⁹

Freelance busting hurts young athletes, per Chris James in California. Many youth sports clubs are nonprofits. Coaches and referees tend to be volunteers or independent contractors.

Freelance busting hurts people trying to find well-written information outside the social-media swirl. Two-thirds of writers and authors in the United States are self-employed.⁶⁰

“FREEDOM TO JOIN A UNION”

One of the most Orwellian language shifts we have seen recently from the freelance-busting brigade is the claim that restricting self-employment is about giving independent contractors the “freedom to join a union.” This narrative got a nationwide rollout as part of

⁵⁸ This example is from BBT Logistics in Newark, N.J.

⁵⁹ “Live music will all but stop if independent contractor bill passes,” Bradley Madsen, *Asbury Park Press*, March 6, 2020

⁶⁰ U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, “Writers and Authors,” retrieved May 9, 2025

the Harris-Walz 2024 presidential campaign.⁶¹ ⁶² In reality, we all have the freedom to join a union. We can all take a traditional job and choose to join a union. Our freedom to do so is enshrined in the National Labor Relations Act of 1935.

We also have the freedom to choose other ways of earning a living. According to Gallup, while 71% of Americans approve of labor unions, a full 80% of nonunion employees either do not wish to join, or are at best neutral on the subject. A majority of nonunion workers in the United States (58%) say they are “not interested at all” in joining a union.⁶³

There is no evidence of widespread desire for the “freedom to join a union” or for traditional jobs among independent contractors. According to the U.S. Bureau of Labor Statistics, only 8.3% of independent contractors would prefer a traditional job.⁶⁴

RECENT DATA AND STUDIES

Policymakers who push freelance busting often suggest that independent contractors are mostly app-based “gig workers.” That is not true. “Gig workers” who provide platform-mediated services such as ridesharing and food delivery amount to less than 10% of the independent contractor workforce.⁶⁵

And among app-based workers, industry data shows 77% wish to maintain independent status.⁶⁶ This clear majority is 65% for ride-hailing drivers in non-industry findings by Pew Research Center.⁶⁷

⁶¹ “VP Harris tells teachers union she’s ‘fighting for the future,’ blasts Project 2025,” *Missouri Independent*, July 25, 2024

⁶² “Tim Walz slams Trump and Vance’s ‘war on workers’ in a fiery pro-union speech,” *Fast Company*, August 16, 2024

⁶³ “U.S. Approval of Labor Unions at Highest Point Since 1965,” Gallup, August 30, 2022

⁶⁴ “Contingent and Alternative Employment Arrangements,” U.S. Bureau of Labor Statistics, November 8, 2024

⁶⁵ “Labor Myth Busting Series: The Gig Economy,” Liya Palagashvili, Labor Market Matters, November 22, 2023

⁶⁶ “Worker Survey,” Flex/Morning Consult, 2022

⁶⁷ “The State of Gig Work in 2021,” Pew Research Center, December 8, 2021

Here is some of the most recent research about America's independent contractors:

U.S. Census⁶⁸

- Women own 41.1% (11.2 million) and minorities own 36.7% (10 million) of the nation's nonemployer businesses (those without paid employees).
- Hispanic-owned firms account for 16.4% (4.5 million) of nonemployer businesses.
- Veteran-owned firms make up about 4.8% (1.3 million) of nonemployer businesses.
- Asian-owned firms account for 8.6% (2.3 million) of nonemployer businesses.
- Black or African American-owned firms are 13.2% (3.6 million) of nonemployer businesses.
- American Indian or Alaska Native-owned firms account for 1.2% (329.0 thousand) of nonemployer businesses.
- Native Hawaiian or Other Pacific Islander-owned firms are 0.3% (83.5 thousand) of nonemployer businesses.

Independent Women's Forum⁶⁹

- 82% of women and overall voters, 80% of young voters and 79% of seniors say the government should not force people to work 9-to-5 jobs, but instead allow people the flexibility to be independent contractors.
- 85% overall, 86% of seniors, 84% of women and 78% of Democrats say independent contracting is a good option for many people seeking flexible jobs

Upwork⁷⁰

- Skilled freelancers performing knowledge work earned \$1.5 trillion in 2024.
- More than 1 in 4 (28%) knowledge workers in the United States are freelance. Those who earn exclusively through freelance work report a median income of

⁶⁸ "Census Bureau Releases Nonemployer Business Data by Demographic Characteristics of Owners," U.S. Census Bureau, February 8, 2024

⁶⁹ "New Poll: 82% of Women Say Government Should Not Force Them into 9-to-5 Jobs," Independent Women's Forum, May 5, 2025

⁷⁰ "Future Workforce Index," Upwork, April 23, 2025

\$85,000, surpassing their full-time employee counterparts at \$80,000.

- 53% of skilled Gen Z workers are already freelancing.

MBO Partners⁷¹

- 84% of full-time independents say they are happier working on their own.
- Fully two-thirds (65%) say they feel more secure working independently.
- 79% say working on my own is “better for my health.”
- The number of independents making more than \$100,000 rose in 2024 to 4.7 million from 4.6 million, up sharply from 3 million in 2020.
- Almost 4 in 10 (38%) workers older than 65 are independents, and half (51%) who report being retired and having some form of paid work are independents.

UCLA Health⁷²

- Self-employed women have a 43% lower risk of reporting high blood pressure, a 34% lower risk of reporting obesity, and a 30% lower risk of reporting diabetes compared to women who work for a salary or wages.
- Self-employed women are more likely to report exercise and a lower body mass index.

AARP⁷³

- More than a quarter (27%) of older workers are doing freelance or gig work, and the number is higher (32%) for those ages 40-49.
- While 89% of gig workers say making extra money is their primary motivation, flexible work hours are a close second at 87%.

⁷¹ “State of Independence in America 2024,” MBO Partners

⁷² “Self-employed women report lower risk of high blood pressure and obesity compared to women who work for wages,” UCLA Health, July 28, 2022

⁷³ “Gig Work on the Rise Among Older Adults as Demand for Workplace Flexibility Grows,” AARP, January 18, 2023

Institute for Justice⁷⁴

- Compared to traditional small business owners, home-based business owners are more likely to be female, minorities, single and renters.
- More than half (53%) of respondents reported they started their business to make money as a stay-at-home parent.
- Nearly a third (31%) of respondents started their business because they have a disability that makes it difficult for them to work in a traditional office.
- Home-based businesses are particularly attractive to caretakers, especially mothers: 45% of respondents had children at home.

A.Team⁷⁵

- “Highly-skilled freelancers are thriving. ... These are engineers, developers, product managers, designers, data scientists, and marketers who have gone through a rigorous vetting process that places them amongst the top 2% in their respective fields. Many are ex-FAANG (Facebook/Meta, Apple, Amazon, Netflix, and Alphabet/Google).”
- 68% of survey respondents said generative AI makes them *more* likely to pursue an independent career working for multiple companies.

Fiverr⁷⁶

- Almost 70% of Gen Z respondents are actively freelancing or plan to do so.
- A quarter of Gen Zers want to own their own business, while 14% want to freelance for their entire careers.
- 38% believe that freelancing full-time gives them the power of never getting laid off.
- Almost 36% of Gen Zers see freelancing as a good backup if they were to lose their job.
- Nearly 20% of Gen Zers believe companies have no loyalty to employees anymore.

⁷⁴ “Entrepreneur from Home,” Institute for Justice, January 2022

⁷⁵ “Thanks to AI, we’re in the golden age of freelancing,” *Fast Company*, May 3, 2024

⁷⁶ “Layoffs Prompt Gen Z to Rethink Job Security and Careers, Fiverr Survey Reveals,” Fiverr, February 28, 2024

- Nearly 25% of Gen Zers say freelancing is more stable than a traditional full-time job.

CONCLUSION

There is an enormous difference between policymaking that stops the misclassification of employees and policymaking that hurts entrepreneurial Americans who wish to be their own bosses. Things have gone horribly awry when policymaking threatens the livelihoods of the vast majority of independent contractors who prefer self-employment.

Congress should urgently pass the Modern Worker Empowerment Act and, if possible, add preemption of state independent contractor laws.

Congress also should consider creating a task force of its own, to investigate the motives, data, research and funding sources that have led to such restrictive independent-contractor policymaking at the state and federal levels. Any such task force should be led by and include a substantial number of actual independent contractors.

Please, stop these attacks on our freedom to earn a living, once and for all.