



JUST THE FACTS: FREELANCE JOURNALISTS, CREATIVE PROFESSIONALS AND THE PRO ACT

I hear that the PRO Act is just like A.B. 5 in California and would cause freelance journalists and creative professionals to lose work. Is this true?

No. Corporate interests are waging a misinformation campaign against the PRO Act. The only way the PRO Act could possibly affect freelance journalists or creative professionals is that it might allow them to join a union and engage in collective bargaining, but only if they choose to. Those not wanting to organize a union or engage in collective action would be unaffected. The PRO Act would not stop freelance journalists or creative professionals from continuing to do freelance work.

So what does the PRO Act's ABC test do then?

The "ABC test" in the PRO Act is used to determine who qualifies for protection under federal law if and when they choose to engage in collective action, organize a union or bargain collectively.

So is the PRO Act the same as A.B. 5 in California?

No. A.B. 5 in California redefines who is an "employee" under a broad range of state employment laws. The PRO Act does not touch any of those laws. The PRO Act only affects the National Labor Relations Act (NLRA), which is the federal law that governs private sector unions.

Would the PRO Act force the company for which I freelance to hire me as a W-2 employee?

No. The PRO Act does not affect any of the laws that typically determine whether someone is hired as a W-2 employee, most notably tax law, but also minimum wage, overtime, unemployment insurance, workers' compensation, etc.

Would the PRO Act outlaw independent contracting, gig work or freelancing, or make freelancing work contracts illegal?

Absolutely not. Nothing in the PRO Act outlaws any kind of work arrangement. The PRO Act's "ABC test" only determines who qualifies for NLRA protection if and when they try to engage in collective action, organize a union or bargain collectively.

How is it possible that the ABC test in the PRO Act would only apply to the NLRA and not to all the other laws that determine whether a worker is hired as a W-2 employee?

This is not unusual. A number of states use the ABC test for some purposes but not others. About half the states use some form of the ABC test to determine who qualifies for unemployment benefits. A few states use the ABC test to determine who qualifies for minimum wage and overtime protection. Some states use the ABC test only in specific sectors of the economy, such as construction.

Shouldn't we just drop the ABC test from the PRO Act to avoid potential problems?

No. The ABC test is an absolutely essential part of the PRO Act. It is critical because employers often try to stop their workers from organizing a union by falsely claiming that the workers are independent contractors. The ABC test protects the rights of those workers to engage in collective action and organize a union.

So why are critics of the PRO Act focusing on the ABC test?

Those critics do not want more workers to have their rights protected because they do not want more workers to be able to organize unions. It's that simple. It's very hard to argue that journalists or anyone else should not have their rights protected if and when they choose to engage in collective action, so the other side comes up with all sorts of distractions to confuse people.

What else would happen if freelance journalists did choose to organize a union?

Organizing a union might allow writers to address issues that are important to them so they can make their jobs and their lives better. This would be a good thing. They would be free to negotiate any kind of work rules that would make it easier for them to earn a living, such as a requirement of timely payment. It is hard to argue that journalists or creative professionals should not have their bargaining rights protected.

Will the PRO Act hurt the bottom line of media companies and lead them to stop hiring freelancers?

No. The only way the bottom line of media companies could possibly be affected is if freelance journalists qualified for NLRA protection, which is not a given, and subsequently organized unions and reached bargaining agreements with the companies, which also is not a given. If this did happen, these journalists would presumably bargain for a result that would make them better off in the end with regard to both compensation and job opportunities.

In short, this is the same scaremongering we always hear from the richest few whenever we speak up for the 99% of Americans who work for a living. When regular people are empowered on the job and earn a fair wage, we spend more, we bolster the economy, and we create more jobs for everyone.