



What's the Problem with the PRO Act?

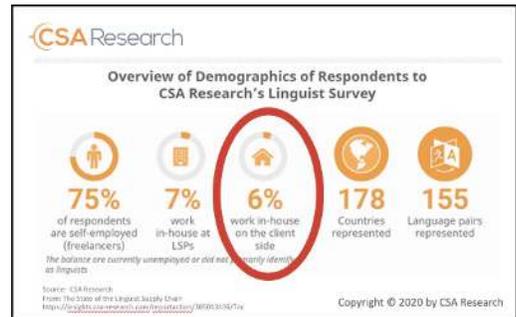
Second Prong of 3-Part Test Severely Harms Professional Interpreters and Translators, Threatens Language Access and Civil Rights

1. What is the PRO Act (HR 842) in the first place?

“PRO” in the title stands for “Protecting the Right to Organize.” It is federal legislation that aims to make the process of forming a union less onerous for workers and bargaining units under federal labor law. The bill includes a **section on classification of workers**. This section applies a **3-part test** on whether a worker can be an **independent contractor**. Federal law supersedes state law and would cover all interpreters and translators in the U.S. workforce.

2. Why does the PRO Act matter so much to interpreters and translators?

More than **75 percent of interpreters and translators throughout the U.S. are independent contractors** in fact and by choice. Only about 6 percent fit the definition of an employee. Highly skilled linguists often shift between numerous clients in a given week and even within a work day. During a year, many receive payment by dozens or hundreds of entities, none of whom acts as a boss. Linguists’ independence in setting their own pay rates and schedule and choice of engagements based on language proficiency and areas of expertise are the norm in the profession. Yet the **bill as written makes no accommodation for freelance status** by the overwhelming majority of professional translators and interpreters.



3. What could denying recognition of independent contractor status to professional linguists mean for them and the economy?

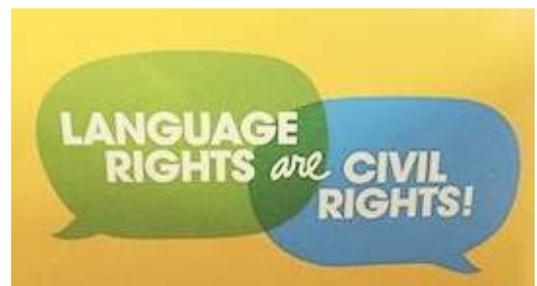
Unless amended, the PRO Act would impose employee status on professional interpreters and translators. This is contrary to the facts of their work or their choice. There is no such thing as an employer of record for most linguists. The arbitrary imposition of employee status would make it **impossible for tens of thousands of linguists to work** in the United States. It would sideline from work that they love thousands of highly skilled professionals who in many cases have spent decades attaining education, earning credentials, building small businesses, and serving their communities. Professional linguists are predominantly women, including many immigrants and women of color. All are part of a **\$50 billion sector of the economy** integral to overcoming language barriers in such areas as courts, medicine and public health, entertainment, sports, arts, education, business, technology, conferences, and voting.



4. Where exactly is the sticking point in the bill as it's currently written?

In Section 101(b) of the PRO Act is a 3-part test on whether a worker can be classified as an independent contractor. The second prong requires that work of a contractor be “performed outside the course of the business of the employer.”

This mandate threatens the entire marketplace of language



(b) EMPLOYEE.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”.

services. It puts the professional livelihoods of tens of thousands of linguists in peril. The mandate conflicts with the common practice of professional translators and interpreters, who contract with different language service companies based on language need, area of expertise (e.g., healthcare, courts, technology, athletics), availability or scheduling, or simple preference. This routine exchange of paid work for specialized services meets demand, improves efficiency, and is an inextricable component of the profession. If any language service company is contracting a language professional for such a short-term assignment, the service is being performed in the same course of business, *not* outside it as the bill requires. Leaving this second prong unaltered in federal legislation would, if enacted, disqualify most freelance linguists from practicing anywhere in the U.S.

5. In addition to economic fallout, what could be the social and legal consequences of the current bill becoming law?

Destabilizing access to professional translators and interpreters would deny language access, corrode quality of life, and **break the law**. About 10 percent of Americans, or more than 25 million residents, have limited English proficiency. In addition, more than 30 million Americans are deaf, hard of hearing, or deaf-blind and may rely on signed language interpreting to overcome language barriers in settings such as court or healthcare. Federal law mandates language access in healthcare under the Affordable Care Act, in all public services under Title VI of the 1964 Civil Rights Act, and in other sectors under the Americans with Disabilities Act of 1990. Professional linguists are essential to upholding federal law. Putting them out of work will trigger grievous violations of it.

6. Wasn't there a law in California that also threatened the livelihoods of linguists?



In 2019, California lawmakers approved a law that addressed misclassification of workers, including those in ride-share companies. The law, known as AB 5, failed to provide an exemption for translators and interpreters. Its enactment unleashed a wave of cutoff notices to freelance professional linguists throughout the state. Thousands lost work, and some faced complete obliteration of businesses built over decades. Cutoff notices routinely cited the law. Many stated that linguists could avoid it by incorporating or moving out of state.

7. Exactly how did California fix that law?

Linguists throughout California organized with the leadership of CoPTIC. They informed themselves about the law and, as constituents, contacted their state legislators about the harm it was inflicting on them and the people they served. CoPTIC engaged hundreds of grassroots supporters and allies in the disability, immigrant, and civil-rights communities to overcome a series of obstacles in the legislative process. In September 2020, linguists succeeded in enacting AB 2257 and earned exemption from the law.



8. Can the PRO Act be fixed to prevent lasting harm to linguists and the people they serve?

Yes. California law now reflects the painstaking work and progress achieved by linguists. Interpreters and translators have the opportunity to educate federal lawmakers about the success in California and their duty to uphold the law, including standards of language access. The PRO Act passed the House of Representatives in early 2021 but remains pending in the Senate. This furnishes a teachable moment for all who want to protect professional livelihoods of thousands of linguists and reliable language access for the millions of people they serve.