August 2021

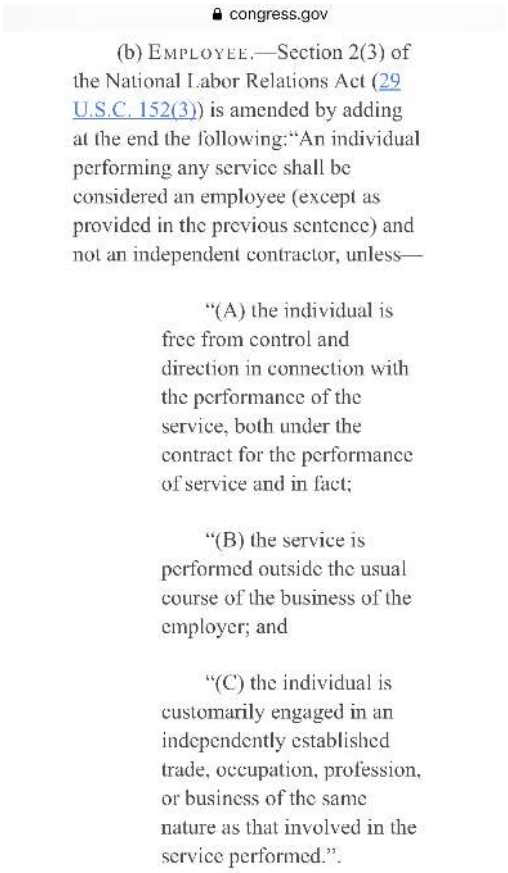
Dear Senator:

We write on behalf of the Coalition of Practicing Translators and Interpreters to call attention to the PRO Act (HR 842) and a critical, crippling defect in section 101b of the bill, now pending in the Senate.

Unless fixed, this segment of the bill threatens to **devastate the hundreds of thousands of highly skilled interpreters and translators**, backbone in the U.S. of a $55 billion language-service economy.

More than 75 percent of **interpreters and translators operate as freelance** professionals. This fact reflects the reality of our work and has remained stable throughout recent decades. We fit the definition of independent contractors, by choosing our own pay, hours, clients, and tools to conduct our skilled work. With training and credentials often acquired through years of practice, we operate outside the control of hiring entities. We also opt for freelance status for its compatibility with the work we do and the variety of clients we engage. These can include several different entities during a given work day, and even hundreds throughout a year, not one of whom functions as an employer.

Yet that is exactly the paradigm **Section 101b of the PRO Act** would impose on thousands of professional linguists. The second component, part B, of the "ABC" test in the bill stipulates that an independent contractor must be "outside the usual course of the business" of the hiring entity. But for most interpreters and translators, the range of clients we may engage with includes language service companies that specialize in particular subject areas, such as engineering, entertainment, transportation, medicine, or athletics, or in particular languages, from Arabic to Mandarin Chinese to localizations of Spanish to Yoruba. This specialization strengthens quality and efficiency. It also rewards skill and interchangeability. But under part B, such contractual *non-employee* relationships, the mainstay of the language profession, would trigger employee status and its entire set of obligations, in thousands of cases, no matter how incongruous to the nature of the relationship.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(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.".

Imposing the employer-employee framework onto freelance linguists is not only contrary to facts of our work. It also **repeats the "ABC" test** that appeared earlier in **state legislation in California** and fails to learn from **terrible fallout that ensued in 2019**.

Many California linguists spent the months prior to the pandemic fielding cutoff notices from clients informing them they could not be engaged—in essence, that their expertise was off limits for all contracts—due to the ABC test and no exemption in state law, which a few other professions had been selectively granted. Linguists educated state lawmakers and succeeded in passing a new law to earn an exemption. Several legislators learned for the first time the essential value of freelance interpreters and translators in emergency care, such as remote interpreting at hospital bedsides, and upholding voting rights, through translation of ballots. Compliance with **statutory mandates of language access** in the Americans with Disabilities Act, the Affordable Care Act, and Title VI of the 1964 Civil Rights Act also depends on professional linguists.

We look forward to discussing this concern further and its significance to our livelihoods, our profession, and the language service marketplace. And we welcome any question from you or staff to facilitate solution.

Sincerely,

Lorena Ortiz Schneider, Chair

Jesús J. Rocha, Steering Committee

Alaina Brandt, Steering Committee