

PRESS RELEASE

Wiley Files Ninth Circuit *Amicus* Brief in California Assembly Bill Case

SUPPORTS FIRST AMENDMENT RIGHTS AND ECONOMIC LIBERTIES OF INDEPENDENT CONTRACTORS

May 27, 2020

Washington, DC – Wiley Rein LLP has filed an *amicus* brief in the U.S. Court of Appeals for the Ninth Circuit on behalf of the Independent Institute in support of the Appellants. The case, *American Society of Journalists and Authors, Inc., et al. v. Becerra*, presents an important challenge to California’s Assembly Bill 5 (A.B. 5), which essentially turned more than a million of the state’s independent contractors into employees. As a result of this legal status change, A.B. 5 has created devastating consequences for California’s freelance workers (including ride-share drivers, delivery services, interpreters, certain healthcare professionals, etc.) and the First Amendment rights of the Appellants.

Wiley associates Krystal B. Swendsboe and Frank H. Chang served as pro bono counsel for the Independent Institute. They authored and filed the brief in collaboration with the Institute – a nonprofit, nonpartisan public-policy research and educational organization.

A.B. 5 not only infringes on the Appellants’ free speech rights, it draws arbitrary and discriminatory lines through every industry, according to the Wiley brief. As a result, the brief continues, A.B. 5 cannot withstand any level of constitutional scrutiny. Additionally, the case further demonstrates how rational basis review – the test typically applied to laws that restrict economic liberty – is misapplied and often fails to protect important economic liberties.

“In enacting the statute, the California State Legislature upended the job and economic stability of over a million independent contractors by converting them to employees,” Wiley said in the brief. “At the

Related Professionals

Krystal B. Swendsboe
Of Counsel
202.719.4197
kswendsboe@wiley.law

Practice Areas

First Amendment/Commercial Speech
Issues and Appeals
Litigation

same time, A.B. 5 imposes an arbitrary and convoluted exemption scheme that benefits high-income jobs while providing no relief for low- and middle-income workers. A.B. 5 has fundamentally transformed California's labor market for the worse."

The brief requests that "the Court rule in favor of Appellants and find that A.B. 5's irrational and arbitrary exemption scheme violates the Equal Protection Clause, reverse the dismissal of Appellants' complaint, and grant a preliminary injunction in Appellants' favor."

The case was filed on March 11, when two journalist organizations asked a California federal judge to block the state from enforcing part of the A.B. 5, arguing that the law draws distinctions based on occupation that unfairly restrict freelance journalists and limit their First Amendment expression. On March 20, U.S. District Judge Philip Gutierrez denied the groups' bid to partially enjoin A.B. 5, and granted Attorney General Xavier Becerra's motion to dismiss their constitutional challenge to the statute. The case was appealed to the Ninth Circuit.

To read the brief, please [click here](#).