

2021 EFA election results –

Congratulations to new BoG members

Board of Governors Election Results

- ▶ **Officers**
 - ▶ Co-executive: Ruth Mullen
 - ▶ Treasurer: Marcina Zaccaria
- ▶ **Members at Large (in alphabetical order)**
 - ▶ Maria Alonzo
 - ▶ Nanette Day
 - ▶ Andrew R. Huston
 - ▶ Brittany Krysinski
 - ▶ Denise Larrabee
 - ▶ Cody Sisco
 - ▶ David Stacks



The EFA **Board of Governors** (BoG) has several new members, starting from the top of the leadership ranks, as the result of this year’s election.

Ruth Mullen is the new co-executive director, replacing **Bill Keenan**, who has stepped down after many years of service. She will work with continuing co-exec **Christina Frey** in leading the association.

Members at large in the wake of the 2021 election are **Maria Alonzo**, **Nanette Day**, **Andrew Huston**, **Brittany Krysinski**, **Denise Larrabee**, **Cody Sisco** and **David Stacks**. (For their committee positions, see the masthead on page 2.)

The EFA thanks departing board members **Tara Kovach**, **Adrienne Moch** and **Heather Pendley** for their service on the BoG.



EMPOWERING EDITORIAL
FREELANCERS SINCE 1970

Contents

EFA news
Member news	2
Manager.....	3, 6
Profiles.....	5, 6
New contacts	6
Annual reports	9
Strategic plan	16
Event presence ..	16
PRO Act event.....	7

Fight for Freelancers co-founder updates EFA members on PRO Act

By Amy Spungen

Last February, the EFA **Discussion List** lit up with posts about the Protecting the Right to Organize Act (PRO Act) bill that was making its way through Congress. It was, for many EFA members, a confusing subject. The exchanges occasionally grew testy as proponents of the pro-union PRO Act, including its three-pronged ABC Test, argued with opponents of it. The issue for freelancers is that the test in the PRO Act could affect their ability to *be* freelancers. The EFA issued a statement about the PRO Act on March 6 (see next page), but the discussion, arguments and bafflement continued.

To help EFA members understand the PRO Act and its potential impact on freelancers, the EFA's **Chicagoland chapter** invited Jen Singer, co-founder of Fight for Freelancers (F4F) USA, as well as a freelance ghostwriter, editor and writing coach, to speak at their virtual monthly meeting on June 23. The Zoom presentation was open to all EFA members.

If passed, the PRO Act would significantly change labor law, strengthening unions and encouraging more workers to organize. It contains the ABC Test (see next page), which was written during the Depression and determines who is an employee and who is an independent contractor (freelancers are independent contractors). To be considered an independent contractor, one must pass all three components of the test. However, many freelancers would be unable to pass the B prong, which states, “the service is performed outside the usual course of the business of the employer.”

In other words, Singer explained, under the PRO Act, an independent

contractor or freelancer cannot do the same work as the hiring entity. For example, magazines and publishers with writers and editors on staff would be unable to hire “1099 freelancers” (that is, freelancers who receive 1099 tax forms from clients confirming independent contractor status) to write and edit without breaking the law.

There are different versions of the antiquated ABC Test, and the PRO Act's is one of the strictest. Similar legislation to the PRO Act has been introduced in six states. Legislation most closely resembling the PRO Act appeared in California's Assembly Bill (AB) 5, which passed in 2019 and took

issues, but we freelancers would.”

Nationally, the PRO Act was first introduced in 2020, passing the House of Representatives but not the Senate. When it came around again in this year's legislative session, the bill passed the House on March 9 by a vote of 226 to 205, with five Republicans joining the 221 Democrats voting for it (one Democrat opposed it). The bill was approved as written, without testimony from expert witnesses.

Why do so many Democrats in Congress, and for that matter, President Biden, support the PRO Act? Most likely, according to Singer, because supporting the pro-union

“We believe the PRO Act is a legislative and not a political issue. Fight for Freelancers has everyone from Bernie bros to Trumpers, and we all manage to get along. We are in agreement that the ABC Test needs to come out of [proposed] national law.”

— Jen Singer, Co-founder, Fight for Freelancers USA

effect on January 1, 2020. Businesses stopped hiring independent contractors in California almost immediately across the board. Since then, the state legislature has added exemptions to more than 100 industries statewide to try to rectify the problem. Still, said Singer, many freelancers have lost their freelance careers.

Singer acknowledged that there “absolutely are permalancers” who are being exploited. “But there are laws in place to take care of that, like the IRS Test,” she said. She and F4F recommend replacing the ABC Test with the IRS Test, because “it is much more nuanced ... with a whole lot of things you must be able to pass to be able to be an independent contractor. Permalancers wouldn't pass because of the control

proposed legislation aligns supporters against the exploitation of workers on its surface. Yet, many freelancers who are opposed to passage of the Act as currently written are Democrats, and Singer insists that the F4F objection isn't political.

“We totally understand there is sometimes misclassification of workers and it needs to be addressed,” she said. “Yes, unions have been good for our country. We are not anti-union, though unions support the PRO Act and the ABC Test. What we are saying is that this test is a threat to our livelihoods. It's misclassifying us as employees.”

For now, the proposed legislation is stalled in Congress, sitting in the Senate's Committee on Health, Edu-

Continued on next page.

PRO Act, continued

cation, Labor, and Pensions (HELP). Senate Majority Leader Chuck Schumer (D-NY) has said he won't bring the PRO Act up for vote in the Senate until he is certain all 50 Democratic senators would support it; three have refused to do so.

On July 22, HELP held a public hearing on the PRO Act. Three witnesses spoke in favor of the act. The sole invited witness against it was a California hotelier, who spoke about why the ABC Test must be removed. Some characterized the session as an orchestrated event rather than a genuine exploration of the act's pros and cons.

Four New York-based freelancers from Fight for Freelancers USA — Halley Bondy, head of the F4F NY chapter; Rose de Fremery; Pete Croatto; and EFA member **Lila Stromer** — met virtually with Schumer's legislative aide, Ramón Carranza, on July 28 to explain why they are fighting to remove the ABC Test from the PRO Act. The same group met earlier with Caitlin Rooney, the legislative aide for Senator Kirsten Gillibrand (D-NY), for the same reason.

"They seem to have heard us," said Stromer. "I don't know if this will

The ABC Test of the PRO Act

The PRO Act's ABC Test states the following, with the B portion affecting freelancers the most:

"(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."

For more information about the PRO Act and the ABC Test, as well as the IRS Test, visit fightforfreelancersusa.com. ■

go anywhere, but both Gillibrand's aide and Schumer's aide seem open to learning about the IRS guidelines."

The goal is to have the ABC Test removed and replaced with the IRS Test before the PRO Act gets to a Senate vote. Stromer's group also requested that different kinds of freelancers be invited to give expert testimony if the PRO Act reaches the Senate floor with the ABC Test still in it.

President Biden has called for the PRO Act to be added to his \$2.3 trillion infrastructure plan as another means of getting the bill passed into law, but that has not happened. It's possible that the Department of Labor (DOL) will make the ABC Test a rule

(it cannot enact law). Although subject to being overturned under different administrations, a national ABC Test rule would provide the DOL with strict guidelines for determining who is an employee and who is an independent contractor. The DOL could then fine companies that do not comply with the three-pronged test.

Freelancers setting themselves up as LLCs or S Corps would *not* be exempt from the PRO Act and its ABC Test. "That's the number-one question we get," said Singer. "They're going after solopreneurs, and it doesn't matter how your company is set up."

After Singer's presentation, Chicagoland co-coordinator **Kandy Hopkins** reflected on the bill's galvanizing effect. "The PRO Act, in all its unpassed folly, has actually been very successful in its mission of getting ICs to organize. The founding of Fight for Freelancers USA, our meeting on the act, and the many posts on our Discussion List about the act and members contacting their legislators are all evidence of that."

"Jen provided some really invaluable insights. I'm very happy I was able to attend," said **Rose Foltz**, of the greater Philadelphia area.

For a link to the meeting, available until **September 21**, contact Hopkins at chap_chicago@the-efa.org. ■

EFA responds to PRO Act

On March 6, 2021, the EFA issued a statement on the PRO Act. (For the full statement, visit the EFA home page and enter the term PRO Act into the search function.) The EFA objects to the PRO Act as written because of the potentially devastating effect on freelancers of its ABC Test component. The EFA's position relates exclusively to the ability of its members to pursue their freelance work and careers.

Members concerned that this position is anti-union might find the origins of the EFA noteworthy. The EFA was founded in 1970 after a group of editors at Grove Press were fired for trying to start a union within the publishing industry; two of those women, plus a few other freelance editors, began meeting in their houses and eventually formed the EFA.

For more about the history of the EFA, see the recently published EFA booklet "50 Years of the EFA." ■