



NPPA Files Suit Challenging New Unconstitutional California Law

For Immediate Release

National Press Photographers Association (NPPA)

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ATHENS, GA – The National Press Photographers Association (NPPA) filed a lawsuit today challenging AB5, a California law which discriminates against some visual journalists acting as independent contractors (freelancers) by forcing them to become employees of their clients whether they desire this working relationship or not.

The lawsuit asserts that the law violates the U.S. Constitution because it penalizes some freelancers while allowing other visual artists (including marketing photographers, fine artists, and graphic artists) to continue to perform as independent contractors, unencumbered by limits on the number of assignments they do. Additionally, AB5 forbids any freelancing by visual journalists who shoot video, a provision that is challenged in the lawsuit as a content-based restriction on speech. For still photojournalists, the bill imposes a limit of 35 “submissions” or assignments per year for any single client, another content-based First Amendment violation. Similar limits are imposed on freelance writers, editors, and newspaper cartoonists.

NPPA supports the rights of independent visual journalists. They are small businesses that contribute to the economy while helping inform their communities. NPPA has already heard from members in California whose clients plan to drastically reduce their assignments in the next year, resulting in a major loss of income for those freelancers.

NPPA members impacted by the law range from retirees who will be losing extra income to mid-career professionals whose journalism clients are part of their overall business model. All of the impacted members are experienced journalists, trained in ethics and professional standards, who keep their local community informed on matters of public concern. Their voices will be silenced when the impact of AB5 hits their businesses. Some NPPA members report that their income from certain clients is expected to drop by 60-75% next year due to AB5.

“From the first reports of the introduction of this bill, NPPA has expressed its concern over the arbitrary and unjust treatment of independent visual journalists under its terms,” said Michael P. King, president of the National Press Photographers Association. “Unfortunately, despite our best efforts to amend the bill’s language, lawmakers have been unsympathetic and unresponsive to our pleas,” he added. NPPA member David Poller represented the organization and met with the bill’s author, Assemblywoman Lorena Gonzalez (D-San Diego), several times earlier this year in an attempt to make the bill less onerous for photojournalists.

Another concern raised by NPPA in the lawsuit is the impact that the change in employment status will have on the ownership of the copyright to the images made by freelance visual journalists. The default in copyright law is that an employer owns the copyright to the photographs taken by their employees. On the other hand, freelance visual journalists retain their copyright by law unless they give it up. It is common for NPPA’s members to insist that they retain the copyright to their work. An automatic conversion to employment status would jeopardize that copyright status.

“In the visual journalism industry, while many find themselves freelancing as a result of downsizing, many freelancers choose to be independent contractors because it offers them greater flexibility and fewer hours than full-time employment,” said NPPA General Counsel Mickey H. Osterreicher. “Still others chose to be independent photographers because they earn significantly more money and have greater financial security. An independent photojournalist can have a variety of clients which diversifies their income stream. In addition, independent photographers have the flexibility to work on special projects that are foreclosed by the requirements of a staff position.”

“The economic reality for those in the news industry is that nothing will force already struggling media companies to hire more employees,” Osterreicher added.

The lawsuit challenging AB5’s unconstitutional discrimination against journalists was filed in federal court in Los Angeles by NPPA’s pro bono attorneys at Pacific Legal Foundation. “Treating journalists differently based solely on the content of their speech is flatly unconstitutional,” said Jim Manley, an attorney at Pacific Legal Foundation. “The government cannot single-out journalists and deny them the freedom to freelance.”

The American Society of Journalists and Authors, Inc. (ASAJ), is also a plaintiff in the suit.