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Defund AB5 Enforcement

BY KERRY JACKSON

One of the several responses to the death of George Floyd has been activists' demand to defund police departments. Los Angeles Mayor Eric Garcetti was one of the first mayors to surrender to the mob and pledge that he would move a portion of funding from law enforcement "to youth jobs, health initiatives and 'peace centers' to heal trauma," says the Los Angeles Times.

Defunding police departments is on its face a lousy idea, especially when there are so many other government spheres that should be stripped of financial resources. A good start would be the \$17.5 million that has been dedicated to enforcing Assembly Bill 5. Defund that expenditure.

AB5 might be the worst piece of legislation to be passed and signed in California not just in recent memory but going much further back than that. It's anti-worker, anti-job, anti-entrepreneur, and anti-freedom. The bill outlaws freelance and independent contract work for many of the 2 million Californians who rely on those jobs for primary and secondary income, and occupational flexibility. There are some exceptions, but AB5 generally requires workers to be hired employees rather than self-employed through contracts and less-formal agreements. The compliance costs for businesses could reach \$6.5 billion a year.

There's been no shortage of criticism of AB5, all of it warranted. One of the most interesting observations we're just now seeing is from Gene Wunderlich, the mayor of Murrieta, who called it "nothing more than an experiment gone wrong" which "must be eliminated."

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Gone monstrously wrong, we'd say. AB5 almost seems vindictive, as if Sacramento is punishing businesses for merely having the audacity to be businesses. How else to explain why it will be applied retroactively? This means, as Wunderlich says, "that if at any point during the four years leading up to when the law took effect an employer 'misclassified' an employee as an independent contractor, they can be sued for failing to comply with AB5."

So, lawmakers expected California companies to have had knowledge years in advance of the bill's content and passage? Sounds like a plot line from a dystopian novel. And, in fact, it is. Ayn Rand, a novelist who made note of government persecution of business in a much earlier era, anticipated this sort of malicious legislating more than 60 years ago.

"There's no way to rule innocent men," said Dr. Floyd Ferris, a bureaucrat and one of the "looters" in Rand's "Atlas Shrugged." "The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws."

While AB5 is a devourer of businesses and workers, it's a pot of gold for lawyers, says Wunderlich, writing in the California FlashReport blog.

"Immediately after AB 5 was passed, trial lawyers saw the opportunity to make fast cash and sue over these misclassifications. To make matters worse, California's Private Attorney General Act (PAGA) allows one employee at a company to sue on behalf of all employees at the company, exponentially increasing the magnitude of potential lawsuits. Now, on top of the increase in cost of reclassifying independent contractors to employees with employee benefits, employers are under constant threat of being hit with a lawsuit that could destroy them. Lawsuits that they likely have no control over and certainly can't prevent, considering they can be sued for something they did in the past."

Government lawyers were quickly on the case. Attorney General Xavier Becerra and the San Francisco, Los Angeles and San Diego city attorneys have

sued Uber and Lyft, the primary targets of the law, "saying their drivers were misclassified as independent contractors when they should be employees under AB5," says the San Francisco Chronicle. Not only will the companies, neither of which has yet made a profit, have to commit financial resources to their legal defense that could have been used to expand their enterprises and provide more work for Californians, they will likely have to make do with fewer drivers while charging riders 25% to 111% more "across different parts of California to cover increased costs," says Uber economist Alison Stein.

Despite the law's destructive nature, Sacramento plans to spend \$17.5 million to enforce it from a budget that has a gaping \$54 billion hole due to a loss of tax revenues caused by the pandemic lockdown. The policing will put gig economy companies "under the regulatory microscope by state enforcement officials," says labor law firm Fisher Phillips.

The \$17.5 million in taxpayer-provided money will be handed to the California Department of Industrial Relations, which will fund 100 bureaucratic positions, "all singularly focused on ensuring compliance," according to Fisher Phillips. Another \$16 million will be dedicated to enforcement in each of the next two budgets, with expenditures primarily "used to conduct audits, carry out prosecutions, and charge penalties on employers."

Those resources, which could have done some good dedicated elsewhere, will not only be lost forever enforcing a law that should have never been conceived much less approved, they will inflict damage on the economy. The \$6.5 billion in compliance costs, the legal wrangles, and forced business restructuring are a punishing tax on companies. Enforcement is toxic.

So, defund it. Then move on to the law itself. Repeal, not reform. These might sound like unrealistic hopes. But there's enough frustration and anger out there to force change. The question is, is it enough to overcome votes influenced by Sacramento's cash pipeline to the unions?

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