

Dear Assemblywoman Gonzalez,

As president of the American Translators Association (ATA), I represent more than 9,000 translators and interpreters of spoken languages¹, including 1,016 in California. The overwhelming majority of individual ATA members, as well as non-member translators and interpreters throughout the United States, are independent contractors by choice and in fact.

I am sure you have now heard many stories from California-based translators and interpreters about the devastating effect that AB5 has had on their ability to practice their profession and earn a living. I will not waste your time by repeating such stories.

My intent is, first and foremost, to help you understand how the language services industry has historically operated in the United States, and how the individual practitioners, i.e., translators and interpreters, provide their much-needed, and often legally mandated, professional services to various end-users. Based on that information, we hope to clarify why professional translators and interpreters should justifiably be exempted from the strict ABC test imposed by AB5 to address the misclassification of gig economy workers, and instead be subject to the more appropriate Borello test.

First, allow me to make it perfectly clear that ATA fully supports the stated goal of AB5 – the proper classification of workers. Workers who are truly employees should enjoy the rights and benefits to which employees are entitled by law or custom. That includes individual translators or interpreters if they actually are employees. However, by the same token, workers who present themselves on the open market as freelance, professional service providers, (not “gig workers”), should not be burdened with having to prove their independent contractor status due to a legal presumption of employee status. It is for that reason that a reasonable exemption from AB5 should be provided for professional translators

¹ ASL interpreters have historically been in the Registry of Interpreters for the Deaf (RID).

and interpreters, the overwhelming majority of whom are not and do not wish to be treated as employees.

ATA applauds and thanks you for the inclusion of translators under the provisions for “professional services” in AB 1850. We would support amending this to read “professional translators and interpreters.” Professional translators, and interpreters, are not merely “bilinguals,” who happened to be able to speak or type in a foreign language, and the distinction between translation (written) and interpreting (oral) has been made by the US Supreme Court. Translators and interpreters are highly educated and highly trained professional service providers who undertake life-long education and professional development. Over 95% percent of ATA members have university or advanced degrees, and most specialize in complex fields such as software localization, bilingual legal proceedings, financial translations, or educational interpreting.

I would also like to provide additional information regarding translator and interpreter certification, barriers to entry, and prevailing business structures.

ATA is the only widely recognized certifying body for translators in the United States. ATA certification is currently available from English into 15 languages, and from 14 languages into English², and is based on direction – certification from Spanish into English does not comprise certification from English into Spanish. As recently noted by Nimdzi, a leading T&I market researcher, there are at least 350 languages other than English spoken in the United States, meaning that ATA certification can only cover a small fraction of those languages.

The scope of coverage by entities certifying interpreters is similar. The number of languages for which interpreter certification is available for both legal and medical interpreters is similar to or even less than the number offered by ATA.

While certification is indeed a qualifying characteristic of a professional language service provider and is suitable as a potential qualifier for classification as a professional independent contractor, the limited number of languages in which translator or interpreter certification is available makes certification unsuitable as the **primary** criterion for such classification.

² Into English from Arabic, Chinese, Croatian, Dutch, French, German, Italian, Japanese, Polish, Portuguese, Russian, Spanish, Swedish, and Ukrainian, and from English into Arabic, Croatian, Dutch, Finnish, French, German, Hungarian, Italian, Japanese, Polish, Portuguese, Russian, Spanish, Swedish, and Ukrainian. See https://atanet.org/certification/aboutcert_overview.php#1 for details

Both ATA translator certification and interpreter certifications are rigorous psychometrically valid programs, tested and verified by independent professional and/or accrediting bodies. The term “certified” as used by insurance adjusters and other functionaries does not meet this standard.

Unlike state licensure, such as for medical and legal professionals, ATA certification is not a test of entry-level competency. As noted in the Guide to the ATA Certification Program, “ATA certification is a ***mid-career credential*** for experienced, professional translators or interpreters. (emphasis added). As such, mandating certification of translators as a prerequisite for classification as a professional service provider for worker classification purposes would effectively and unfairly disqualify almost all newcomers to the profession.

Barriers to entry:

As an unregulated and unlicensed profession, it is true that there are few, if any, barriers to entry to the practice of translation and interpretation. Just as anyone can offer copywriting, computer programming, public relations, or any number of other professional services that are not legally protected, anyone can market and offer translation or interpretation services.

But there are barriers to success. Research supports the maxim that to be successful, professional translators and interpreters require university-level competency (ACTFL Superior/ILR 3) in both their source and target languages. They require in-depth knowledge of grammar, syntax, and a very extensive vocabulary to be able to properly and accurately convey meaning from one language to another. Mere “bilinguals,” whether immigrants, heritage speakers, or native speakers with some foreign language training, generally do not possess this depth of knowledge, and quickly find themselves unable to succeed in a market that requires accuracy and high quality. About 95% of ATA members have undergraduate or higher degrees, including about 66% with graduate degrees and almost 10% with doctorate degrees. Nor does their education and training stop when they leave university.

Professional translators and interpreters must undertake continuing education in their languages, fields of specialization, technology, as well as best professional practices. While continuing education is a requirement to maintain ATA and other certifications, the vast majority of noncertified practitioners voluntarily undertake continuing education because they know it is a requirement for continued success

and advancement in the profession. This is true not only of ATA members, but also members of other national, regional, and local T&I associations, such as the Northern California Translators Association (NCTA) and the Association of Translators and Interpreters in the San Diego Area (ATISDA). Membership in these types of organizations is a mark of professionalism and includes adherence to a code of professional practice and ethics.

Relationship between translators and interpreters in hiring entities:

The modern T&I industry in the United States arose in the aftermath of World War II in the wake of America's economic and political dominance and the growing Cold War.

Translation "bureaus" as they were generally called then were founded to meet the growing need for translation, particularly in the commercial and legal market. These companies were generally owned and operated by practicing translators, often husband-and-wife teams, who did much of the work themselves. As demand grew, they would hire other translators and interpreters, either as in-house employees or on a freelance basis if demand were insufficient to justify a full-time employee. They were generally located in major commercial centers such as New York, Boston, or San Francisco. They usually operated in a small targeted market, either limited to a small number of languages or specific geographical regions or fields of specialization. The industry was primarily focused on the commercial market as there was little demand for translation and interpreting by individuals.

Two developments in the last 20 years prompted a change in the T&I industry: federal civil rights mandates requiring language access for individuals with limited English proficiency (LEP)³ as well as globalization and internationalization. The former vastly increased the demand for language services for individuals, especially interpreting services for immigrants and other LEP individuals, and California is the leading market for this growth. The latter not only increased

³ Specifically, Executive Order 13166, which "is designed to better enforce and implement an existing obligation: Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Executive Order requires federal agencies that provide federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance." (<https://www.lep.gov/faq/faqs-executive-order-13166/commonly-asked-questions-and-answers-regarding-executive-order-13166>). Additionally, §1557 of the Patient Protection and Affordable Care Act, commonly known as "Obamacare", requires equal access in healthcare, to include language access for LEP individuals.

demand in the commercial market but encouraged some language service companies (LSCs, the current term for the old “bureaus”), to expand their services internationally.

While these developments have caused the T&I industry to grow dramatically over the last 20 years and resulted in a different composition of the language service company landscape, the relationship between these companies, be they large national or international companies, or one of the thousands of small owner-operator companies serving local and regional markets, remains largely the same.

In-house employees handle sales, marketing, project management, desktop publishing, and in many companies, some translation, editing, proofreading, and revision. However, the majority of the actual language services, the translating or interpreting, or post-translation services such as editing and proofreading, is performed by freelance translators and interpreters acting as independent contractors. Layers of subcontracting and brokering are rare and considered to be outside ethical operations for professional translators and interpreters.

These freelancers are free to accept or reject work, to negotiate their fees, and to determine how they will perform their work. They can, and with almost no exceptions, do work for several other language service companies. In fact, working with 5 to 10 different language service companies is a de facto economic requirement because no single company can usually offer these freelancers sufficient work to enjoy a decent standard of living. While it is true that interpreters are generally unable to set the time or location for the provision of their services, those requirements are also not determined by the language service company, but rather by the individual or entity requesting interpretation services.

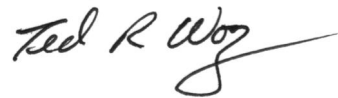
It should also be noted that, with some exceptions, language service companies are not mere “referral agencies,” like online brokers of pet sitting, house cleaning, or other unskilled jobs. As mentioned above, LSCs also provide other value-added services such as project management, desktop publishing, consultation, and other related services in addition to translation and/or interpreting.

Based on the information provided above, I hope this provides a clearer picture of the translation and interpreting industry and profession.

To alleviate the economic damage that has already resulted in California from the passage of AB5, I strongly urge you to provide an exemption for professional translators and interpreters that would allow continued use of the Borello test. The Borello test is appropriate for the overwhelming majority of practicing professionals in California, and the rest of the United States. If there are indeed language service companies that do not grant translators and interpreters the freedom from control necessary for an independent contractor, or that impose other conditions that are inimical to an independent contractor relationship, they will fail the Borello test and be required to properly classify such individuals as employees.

I thank you for this opportunity to provide information about our professions and industry that is so vital to California's continued economic success on the national and international stage. I remain available for any clarification or information needed to come to a mutually beneficial conclusion.

Sincerely,

A handwritten signature in black ink that reads "Ted R. Wozniak". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ted Wozniak
President, American Translators Association