



Written by [Bob Adelman](#) on February 18, 2020

Obama Judge in California Rules Against Gig Economy

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[The ruling](#) denying injunctive relief to Uber and Postmates and their drivers from California's onerous, and likely unconstitutional, law AB 5 by Obama-appointed judge Dolly Gee last week illustrates why such judges holding for unions and the state need to be replaced.



The bill was supported by unions and the state of California for obvious reasons. The unions hated the competition, and the state needed the tax revenues that would be generated by turning freelancers into employees.

Proponents said gig workers would benefit from minimum-wage laws imposed on employees, and they would now have sick-leave coverage and unemployment insurance, along with other benefits. And the state would gain an estimated \$8 billion from payroll taxes that gig operators such as Uber and Postmates and their independent contractors weren't currently paying.

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Opponents pointed out the obvious: Most gig workers don't want to be employees. Most like the freedom associated with the gig economy, such as setting their own hours. And customers and consumers enjoy the better service and lower costs associated with services such as Uber and Postmates when compared to taxi drivers and FedEx, UPS, and the U.S. Postal Service. They predicted that once the law became effective on January 1, many of those freelancers would be out of work.

It's already happening.

As *The New American* pointed out, Vox Media (which interestingly supported AB 5) has canceled its contracts with about 200 freelance writers and replaced them with just 20 new part-time and full-time employees.

Thomas Cushman, a commercial fisherman, has seen the law force his business to stop paying his crew: "I am a commercial fisherman. I run a boat and keep a 5 man crew. All of the crewmen, providing care for their families, every one [has] slowed to zero income. Meanwhile, I have slip fees and insurance and the bills of owning a business. I cracked the books and sharpened the pencil. We can't do it while making them all full-time employees: the money goes in the wrong direction."

That simple phrase — "the money goes in the wrong direction" — perfectly explains the core issue: Money that would go to pay his crewmen that would come from his customers buying his fish now stays in the pocketbooks of his customers. The unions may be pleased with the outcome but the state, hoping to receive new tax revenues, receives no taxes from people whom the law is putting out of work.

Just how does District Court Judge Dolly Gee, appointed to her position at the Central District of



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California by then-President Barack Obama in 2009, justify her decision not to grant injunctive relief to those being damaged by SB 5?

She can't claim ignorance of the damage. Nor can she deny the number of individuals delivering people and packages for Uber and Postmates that sought relief from the law. In her 24-page ruling, she admits that "more than 300,000 drivers in California currently make deliveries through the Postmates app" and "more than 395,000 drivers in California have used Uber platforms [UberEats and UberRides] to provide services" annually.

She wrote that "Uber and Postmates have demonstrated a likelihood of irreparable harm based on the threats of enforcement against them by city attorneys and the [likelihood] of criminal penalties."

Nevertheless, Judge Gee denied the injunction: "The balance of equities and the public interest weigh in favor of permitting the State to enforce this legislation."

How, pray tell, does the honorable Obama appointee come to such a conclusion? The law violates the Constitution — see Article I, Section 10: "No state shall ... make ... any ... law impairing the obligation of contracts." It violates a Supreme Court ruling (*Energy Reserves Group v. Kansas Power and Light Company*). That ruling held that a state regulation 1) must not substantially impair a contractual relationship; 2) "must have a significant and legitimate purpose" behind it; and 3) it must be reasonable and appropriate for its intended purpose.

Gee's ruling fails on all three points.

It doesn't matter. She wrote, "The Court does not doubt the sincerity of these individuals' views [the plaintiffs who drive for Uber and Postmates], but it cannot second guess Legislature's choice to enact a law that seeks to uplift the conditions of the majority of non-exempt low-income workers rather than preserve the status quo for the smaller subset of workers who enjoy independent contractor status."

If a reader is able to make sense of this hash, please let this writer know.

Gee goes on to confirm for whom she really labors:

Considering the potential impact of the State's ability to ensure proper calculation of low income workers' wages and benefits, protect compliant businesses [Big Taxi] from unfair competition, and collect tax revenue from employers to administer public benefits programs, the State's interest in applying AB 5 to [plaintiffs] and potentially hundreds of thousands of California workers [in the gig economy] outweighs Plaintiffs' fear of being made to abide by the law.

The Court therefore DENIES Plaintiffs' Motion.

So far president Trump has appointed more than 180 federal judges to fill vacancies. In four years Judge Gee will be 65. Perhaps during his second term, the president will have the opportunity to replace her with a clear thinking constitutionalist, if not sooner.

Photo: AP Images

An Ivy League graduate and former investment advisor, Bob is a regular contributor to The New American, writing primarily on economics and politics. He can be reached at badelman@thenewamerican.com.

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