



Sept. 25, 2019

The Honorable Bobby Scott
Chairman, Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Virginia Foxx
Ranking Member, Committee on Education
and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Scott, Ranking Member Foxx and Members of the Committee,

On behalf of Associated Builders and Contractors, a national construction industry trade association with 69 chapters representing more than 21,000 members, I write today regarding the committee markup of the *Protecting the Right to Organize Act* (H.R. 2474). H.R. 2474 would drastically reshape the construction industry and America's workplaces by stripping employees and employers of their constitutionally protected rights and hand power over to politically powerful union bosses. ABC encourages all members of the committee to oppose this legislation.

The PRO Act represents the decades-long attempt by labor activists to increase dues-paying union members at the expense of employees through backdoor means, such as "card check." Under the bill, a union could be certified if it claims there was election interference and they present authorization cards from the majority of the proposed unit. This form of card check closely resembles the Employee Free Choice Act, which sought to strip workers of their right to keep their votes private. The secret ballot is a hallmark of American democracy, and without it, employees could be subject to intimidation and unwanted pressure from a union.

Another deeply concerning provision of the PRO Act is the ability for unions to access employee personal data without consent. In today's world, the protection of privacy and personal information is important to financial security and personal well-being. If enacted, employees' home addresses, work locations, cellphone numbers, personal and work email addresses and shift times would be unknowingly shared with unions.

The PRO Act would also codify the *Browning-Ferris* "joint-employer" standard, which expands the definition of joint employer under the National Labor Relations Act to include those employers who have "indirect" control and "unexercised potential" control of their subcontractors. The construction industry is built around the contractor/subcontractor model: small businesses that specialize in particular trades partner with other specialty contractors under the umbrella of a larger general contractor. This business format allows small businesses to thrive and helps to ensure the most safe and qualified craftspeople are performing work on projects. If the new joint-employer standard were to go into effect, general contractors would face unprecedented levels of potential liability and compliance costs and therefore discontinue their work with many smaller contractors. This would have a devastating impact on ABC members, the majority of which are small businesses.

H.R. 2474 also seeks to rob employers of their right to counsel in a provision similar to the U.S. Department of Labor's failed and unconstitutional 2016 "persuader" rule. Under this rule, employers would be penalized for seeking legal advice if they learned that their employees intended to vote for a union. The federally protected unionization process is a complicated legal procedure that is governed by decades of labor law and court precedent. As such, all employers should seek the advice of legal counsel to ensure they protect their employees' rights if they are facing a union election. The persuader rule does not recognize this, however, and attempts to punish employers who speak to their attorneys. Not only does it increase liability for employers, but it will cause attorneys not to provide their services for fear of retaliation from union bosses.

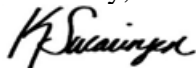
We understand that Chairman Scott and committee Democrats plan to add several harmful provisions to the bill during markup, including allowing union elections to occur electronically, through the mail or at a location other than the employees' place of business. This would open the election to interference, tampering and threaten the sanctity of the secret ballot. Another amendment would codify the NLRB's 2014 decision in *Specialty Healthcare*, which would lead to tiny, fractured bargaining units within different classes of employees. This would make it easier for unions to gerrymander the workforce into "micro-unions," effectually disenfranchising employees that oppose unionization. These micro-unions greatly limit an employer's ability to cross-train and meet customer and client demands via flexible staffing as employees could not perform work assigned to another unit.

Additionally, the PRO Act seeks to codify the following alarming schemes:

- Eliminate right-to-work laws nationwide, including in the 27 states that have signed it into law, forcing workers to join unions they do not want;
- Stifle work of independent contractors, which limits workplace flexibility and opportunity; and
- Increase the likelihood of coercion, boycotts and picketing by eliminating secondary coercion restricting.

For these reasons we encourage all members of the Committee on Education and Labor to oppose H.R. 2474. The PRO Act would be harmful to employees, employers and the American economy as a whole.

Sincerely,



Kristen Swearingen

Vice President of Legislative & Political Affairs