



July 22, 2021

The Honorable Patty Murray
Chair
U.S. Senate Committee on Health, Education
Labor & Pensions
Washington, D.C. 20510

The Honorable Richard Burr
Ranking Member
U.S. Senate Committee on Health, Education
Labor & Pensions
Washington, D.C. 20510

Dear Chair Murray, Ranking Member Burr and members of the U.S. Senate Committee on Health, Education, Labor & Pensions:

On behalf of Associated Builders and Contractors, a national trade association with 69 chapters representing more than 21,000 members, I am writing to express our opposition to the Protecting the Right to Organize Act (S. 420). Before the committee considers testimony at the hearing titled: “The Right to Organize: Empowering American Workers in a 21st Century Economy,” ABC writes you to underscore the most dangerous provisions of the bill and the negative affects it would have on the construction industry and the economy.

While proponents of this bill claim the PRO Act would simply protect the ability of workers to join a union if they so choose, the PRO Act would instead strip workers of their privacy, freedom and choice while imposing unbearable costs on our nation’s small businesses and hardworking Americans.

Tipping the scales against workers and small businesses in union elections:

The PRO Act would fundamentally change the process and rules of a union election by replacing secret ballots in union elections with “card check,” a system where votes are made public and employees fear retribution for voting their conscience. The bill would also mandate employers to provide employees’ personal contact information, such as cell phone numbers, home addresses and even assigned shifts without prior approval from the employees themselves, to union organizers. Employees would not have a say in which information was provided, exposing them to potential harassment and intimidation. These provisions violate basic employee privacy rights, forcing employers to turn over employees’ information to union organizers without consent and expose them to intimidation unless they back unionization efforts.

S. 420 would allow secondary boycotting, which could bring commerce to a halt and make neutral businesses and private citizens vulnerable to threats and intimidation. This provision would rescind all NLRA restrictions that currently make it unlawful for unions to impose economic injury on neutral third parties that are not involved in an underlying labor dispute, including consumers, companies or other unions that do business with the company involved in the dispute. The elimination of neutral status will expose all consumers, unions, and businesses to coercion, picketing, boycotts, as well as excessive and abusive tactics used decades ago. This would have a devastating impact on the construction industry, especially as we continue to rebuild amid the COVID pandemic, rising materials prices and supply chain delays.

The bill would also interfere with attorney-client confidentiality, making it harder for businesses, particularly small businesses, to secure legal advice on complex labor law matters. Like the Obama-Era Persuader Rule, the PRO Act would force a breach of attorney-client confidentiality and make it more difficult for employers to access legal counsel or other expert advice on complex labor and employee relations issues during union organizing drives.

Eliminating basic employee rights and freedoms:

Since 1943, 27 states have passed right-to-work laws prohibiting employers from requiring employees to join unions as a condition of employment, incentivizing competition and producing a better work environment for businesses and workers. The PRO Act would completely reject this choice by eliminating these independently, state-passed laws, forcing individuals to join a specific union and forfeit a portion of their hard-earned paychecks to support the activities and influence of unions if they want a job at a unionized factory, jobsite, school or company.

The PRO Act would also curb opportunities for individuals to work independently through the gig economy platforms or more traditional independent contractors. The provision would codify the “ABC” test, the standard adopted by California’s disastrous AB 5, to limit the rights of independent contractors, forcibly reclassifying many of them as employees. A national version of AB 5 could put up to 8.5% of gross domestic product at risk, while diminishing the freedoms of countless potential entrepreneurs.

S. 420 demotes frontline leaders, who would no longer be part of management, by restricting the definition of “supervisor,” thereby preventing employers from treating many frontline leaders as members of their management team. This legislation redefines “supervisor” to restrict it to those individuals who perform such “supervisory” duties “for a majority of the individual’s worktime”. Moreover, the PRO Act deletes the supervisory status of “assigning” work and having the “responsibility to direct” work of employees, thus eliminating the two factors that most commonly confer supervisory status on traditional frontline leaders.

The PRO Act imposes government control over private contracts by mandating compulsory, binding arbitration on employers and employees if they cannot reach a collective bargaining agreement within the first 120 days of negotiations. This intrusion into private sector labor relations would strip both employers and workers of their rights and ability to negotiate a fair agreement.

Imposing unbearable burdens on small businesses and job creators:

The PRO Act would codify the National Labor Relations Board’s controversial Browning-Ferris Industries joint-employer standard that has threatened our country’s small and local businesses. If implemented, the standard would affect 44% of private sector employees and profoundly damage many business-to-business contracts and arrangements, causing particular harm to small businesses in the construction industry.

The PRO Act greatly expands small businesses liability for “Unfair Labor Practices” by expanding both the scope of remedies and the avenues to challenge allegedly impermissible conduct under the law. This legislation adds significant monetary obligations, including back pay without reduction for interim earnings (e.g., unemployment or earnings from a new job), front pay and liquidated damages equal to twice the amount of other damages awarded. The PRO Act would also expand the type of available remedies to include civil penalties for non-compliance with NLRB orders, enforceable by civil action in federal district court. These penalties begin at \$50,000 for each failure to comply with a board order, could be doubled where the employer committed a similar unfair labor practice in the prior five years and could apply to individual directors and officers of the employer.

These are just a few of the harmful provisions included in S. 420 that would have a devastating impact on construction in the United States and cause significant harm to our nation’s economy at this critical junction. We urge the committee to reject this legislation and enact commonsense policies that strengthen our economy, offer more freedom for workers to achieve their career dreams and support good-paying jobs for all of America’s workers.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs