



March 7, 2023

The Honorable Bernie Sanders
Chair
U.S. Senate Committee on Health, Education
Labor and Pensions
Washington, DC 20510

The Honorable Bill Cassidy
Ranking Member
U.S. Senate Committee on Health, Education
Labor and Pensions
Washington, DC 20510

Dear Chairman Sanders, Ranking Member Cassidy and Members of the U.S. Senate Committee on Health, Education, Labor and Pensions:

On behalf of Associated Builders and Contractors, a national trade association with 68 chapters representing more than 22,000 members, I am writing to express our opposition to the Protecting the Right to Organize Act. Before the committee considers testimony at the hearing titled “Defending the Right of Workers to Organize Unions Free from Illegal Corporate Union-Busting,” ABC would like to underscore the most dangerous provisions of the bill and the negative effects they would have on the construction industry and the economy.

While for years proponents of this bill have claimed it will 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. Additionally, the PRO Act would impose undue costs on our nation’s small businesses at a time when they are faced with inflationary prices, supply chain delays, workforce shortages and an increasingly hostile regulatory agenda.

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

The PRO Act would fundamentally change the process and rules of a union election, enacting a “card check” system where votes are made public. This provision removes a critical requirement for employees on both sides of the election to have their say on whether to join a union. It would make employees fear retribution for voting their conscience, exposing them to harassment and intimidation unless they back unionization efforts.

The bill would also mandate that employers provide employees’ personal contact information, such as cell phone numbers, home addresses and even assigned shifts, to union organizers, all without prior approval from the employees themselves. 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 exposing them to harassment and intimidation unless they back unionization efforts.

The PRO Act 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 National Labor Relations Act 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 and boycotts, as well as excessive and abusive tactics used decades ago. With the effect of harming the economic interests of as many businesses as can possibly be linked to the primary target, this tactic would be used to essentially blackmail businesses into recognizing a labor union or face severe costs and harm to their daily operations. This would have a devastating impact on the construction industry and would result in stoppage or delays of critical construction projects throughout the country. This is at a time when the federal government seeks to fully implement the bipartisan Infrastructure Investment and Jobs Act and other legislation with significant funds for construction, including the CHIPS and Science Act and the Inflation Reduction Act.

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 employee rights and freedoms:

Since 1943, a total of 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 independent, 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 gig economy platforms or more traditional independent contractors. The provision would codify the “ABC test,” the standard adopted by California’s disastrous Assembly Bill 5 to forcibly reclassify many independent contractors 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.

The PRO Act demotes front-line leaders, who would no longer be part of management, by restricting the definition of “supervisor.” This legislation redefines “supervisor” as only those individuals who perform such “supervisory” duties “for a majority of the individual’s worktime.” This would prevent employers from treating many front-line leaders as members of their management team. 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 front-line 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 threatens 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 types of available remedies, to include civil penalties for noncompliance 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 and could be doubled when the employer committed a similar unfair labor practice in the prior five years. It could apply to individual directors and officers of the employer.

The harmful provisions included in the PRO Act 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 and support well-paying jobs for all of America’s workers.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen".

Kristen Swearingen
Vice President, Legislative & Political Affairs