



May 23, 2023

The Honorable Bob Good  
Chairman  
U.S. House Subcommittee on Health,  
Employment, Labor, and Pensions  
2176 Rayburn House Office Building  
Washington, DC 20510

The Honorable Mark DeSaulnier  
Ranking Member  
U.S. House Subcommittee on Health,  
Employment, Labor, and Pensions  
2101 Rayburn House Office Building  
Washington, DC 20510

Chairman Good, Ranking Member DeSaulnier and Members of the U.S. House Subcommittee on Health, Employment, Labor, and Pensions:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 member companies, I appreciate the opportunity to comment on the committee's hearing, "Protecting Employees' Rights: Ensuring Fair Elections at the NLRB." ABC and our members value secret ballot elections to ensure that workers have a privacy-protected vote that reflects their true preference for unionization in their workplace.

Ensuring secret ballot elections is critical. It is essential that Congress act to strengthen the rights, flexibility and privacy protections of workers as the Biden administration seeks to implement harmful regulations that will threaten workers' rights, freedoms and choices, most notably through the National Labor Relations Board and U.S. Department of Labor.

Most recently, ABC submitted comments strongly opposing the NLRB's 2022 proposed rule on Representation-Case Procedures, which would rescind three representation rules that were finalized under the Trump administration in 2020.

In particular, ABC is concerned that the proposed rule returns to the precedent set by the Staunton Fuel decision, which purported to permit contract language alone to create a Section 9(a) bargaining relationship in the construction industry, notwithstanding the plain language of Section 8(f) preventing such agreements from acting as bars to employee election petitions. Courts have repeatedly rejected the NLRB's holding in Staunton Fuel, requiring instead that a Section 9(a) relationship can only be established upon a showing of actual evidence of union-majority status contemporaneous with the agreement. The NLRB's proposed rule is inconsistent with this judicial authority and with longstanding principles of majority status under Section 9(a).

ABC also opposes the NLRB's 2022 proposed change to the blocking charge policies. ABC believes that the proposed return to the Board's defective blocking charge policies impedes, rather than protects, employee free choice. Finally, ABC opposes the NLRB's proposed modification to the immediate voluntary recognition bar.

In the face of an increasingly hostile regulatory environment for America's small businesses, ABC urges Congress to support the Employee Rights Act ([H.R. 7194/S. 3889](#)), introduced by Sen. Tim Scott, R-S.C., and Rep. Rick Allen, R-Ga., which would provide essential protections for workers' rights, choices and freedoms. The ERA provides much-needed protection and clarity for our nation's job creators and workforce, outlined below.

#### **Ensuring the Use of Secret Ballots in Union Elections:**

- The ERA would ensure that any effort to organize a workplace or hold a strike is subject to a private ballot vote. Secret ballot elections ensure that workers have a privacy-protected vote that reflects their true preference on unionization in their workplace. Attempts to eliminate the secret ballot vote and replace it with a card check system where workers' votes are public means that

employees' right to a private ballot in union elections are stripped away in favor of collecting signatures, or "cards." ABC believes that efforts to eliminate a secret ballot can expose workers to intimidation and coercion and that votes for representation in the workplace must uphold the standard of a private, secret ballot.

**Stimulating Local Businesses and Entrepreneurship Opportunities:**

- The ERA includes the ABC-supported Save Local Business Act, which clarifies the joint-employer standard to provide clarity and certainty for small business owners and workers. It would protect the traditional contractor and subcontractor relationship in construction and give more Americans the opportunity to start their own businesses. This provision would restore clarity and protect businesses from unnecessary involvement in labor negotiations and disputes involving workplaces in which they do not have direct control.

**Defending Worker Choice and Independent Contractors:**

- The ERA updates the current law to provide much-needed clarity and guidance for the proper classification of contractors under the Fair Labor Standards Act and promotes certainty for employees, independent contractors and employees.

**Protecting Workers From Unwanted Political Exploitation:**

- The ERA would require employees to consent to their union dues being used for anything other than collective bargaining efforts. Many workers join a union in hopes that their dues will help improve their workplace. However, hundreds of millions of dollars in union dues are spent each year supporting political candidates and causes. The ERA would require workers to consent to their union dues being used for other purposes, including political advocacy.

**Safeguarding Employee Privacy:**

- The ERA limits the amount of employee personal information a union receives during an organizing drive. In addition, the bill makes it an unfair labor practice for the union to use employees' personal information for any reason other than a representation proceeding. Employees currently have no ability to prevent their personal information from being disclosed to the NLRB and to the union that seeks to represent them. Conversely, the ABC-opposed Protecting the Right to Organize Act ([H.R. 20/S. 567](#)) would require companies to turn over sensitive employee records like cell phone numbers, work shifts and home addresses to union organizers.

ABC appreciates the opportunity to comment on this important hearing as well as the committee's consideration of our concerns.

Sincerely,



Kristen Swearingen  
Vice President, Legislative & Political Affairs