



May 8, 2019

The Honorable Frederica Wilson
Chair, Subcommittee on Health, Employment,
Labor and Pensions
U.S. House of Representatives
Washington, DC 20515

The Honorable Tim Walberg
Ranking Member, Subcommittee on Health,
Employment, Labor and Pensions
U.S. House of Representatives
Washington, DC 20515

Dear Chair Wilson, Ranking Member Walberg, and Members of the Subcommittee,

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 subcommittee hearing “The Protecting the Right to Organize Act: Deterring Unfair Labor Practices.” ABC has strong concerns about many of the provisions in the *Protecting the Right to Organize (PRO) Act* (H.R. 2474) and we encourage all members of the Education and Labor Committee to oppose it. 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.

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.

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 expand 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.

Additionally, the PRO Act seeks to codify the following disastrous ideas:

- Eliminate right-to-work laws nationwide, including in the 27 states that have passed it into law, forcing workers to join unions they did not ask for;
- Stifle work of independent contractors, which limits workplace flexibility and opportunity;
- Violate worker privacy rights by forcing employers to hand over personal employee information to union bosses; 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