



COALITION FOR A  
**DEMOCRATIC WORKPLACE**

May 8, 2019

Dear Members of the Subcommittee on Health, Employment, Labor and Pensions:

The Coalition for a Democratic Workplace (CDW) urges subcommittee members to reject the Protecting the Right to Organize (PRO) Act, H.R. 2474. In an attempt to increase union membership at any cost, the bill would make radical changes to well-established law, diminish employees' rights to privacy and association, destroy businesses, and threaten entire industries that have fueled innovation, entrepreneurship and job creation. CDW strongly opposes this bill.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations Act without regard to the severely negative impact they would have on employees, employers and the economy. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA)—a bill similar to the PRO Act—that would have stripped employees of the right to secret ballots in union representation elections and allowed arbitrators to set contract terms regardless of the consequence to workers or businesses.

Like EFCA, the PRO Act contains provisions that would allow arbitrators with no business experience and no accountability to set contract terms. The arbitrator's decision would be compulsory, regardless of whether the parties find the terms unacceptable or the arbitrator miscalculated what the company can actually afford. In fact, this type of binding arbitration in the public sector has been blamed for multiple municipal bankruptcies and for fueling the public sector pension crisis. Many states and municipalities have taken steps to eliminate or curb arbitrator authority in the wake of fiscally irresponsible arbitrator decisions. Unlike the public sector, private employers go out of business, and the PRO Act does not provide any recourse to employers and employees if the arbitrator's forced contract terms result in job loss or business closure.

The bill would also codify into law the controversial *Browning-Ferris Industries* joint-employer standard, exposing nearly every business relationship to liability for unlawful behavior committed by any entity with which they do business, such as contractors, suppliers, and franchisees. Out of fear of this increased responsibility, larger corporations will either hold back on assisting their franchisees, contractors, or suppliers, impose far more control over them, abandon the franchise model, or cease outsourcing work to smaller, more specialized businesses; in any of these circumstances, small business owners will feel the negative repercussions of this policy change, and the American dream will be far more difficult to achieve.

Similarly, the PRO Act would greatly narrow the circumstances under which an individual can work as an independent contractor, thus substantially diminishing opportunities for Americans to find flexible ways to earn money on their schedule or start their own business. The provision

threatens many opportunities in the gig economy and more traditional independent contractor roles.

Unfortunately, the bill also contains many provisions that strip workers of essential rights. Most importantly, the PRO Act limits employees' ability to choose or reject union representation through secret ballots, which was also a key provision in EFCA. Secret ballots are a vital component of a functioning democracy, but the PRO Act vastly increases the circumstances under which the government could impose union representation despite employees voting against such representation in a secret ballot election. The bill attempts to justify disregarding the election results by making the government-imposed union representation contingent on the fact that at some point in the past a majority of employees signed "authorization cards." This is known as "card check," a concept that was rightly rejected by Congress during the debate on EFCA. As members of Congress understood then, card check is no substitution for a secret ballot election. The process of collecting cards is a public one that is innately susceptible to coercion—where union organizers present employees with cards to sign in front of coworkers. Organizers are then free to share with employees who has or has not signed cards, needlessly exposing workers to intimidation and possibly harassment.

The PRO Act also violates employees' rights to privacy and association. The bill mandates employers provide the contact information for all employees without prior approval from the employees themselves to union organizers. Employees would not be able to opt out of this requirement and would not have a say in what, if any, contact information is provided, again exposing workers to potential harassment. The bill also eliminates Right-to-Work protections nationwide, including in the twenty-seven states that have passed Right-to-Work laws, forcing workers to fund union activity they do not support.

Finally, employers' due process rights are entirely disregarded by the bill. Under the PRO Act employers would not be able to challenge union misconduct during union elections, their right to counsel on complex labor laws would be practically eliminated, and secondary boycotts would be permitted, allowing unions to target neutral third parties and cause them economic injury even if those entities have no underlying labor dispute with the union.

This letter outlines only some of the precarious provisions the PRO Act imposes on the American workforce. This bill tramples on rights and ignores the consequences of dangerous policies on our economy. CDW urges congress to emphatically and unequivocally reject this bill.

Sincerely,

The Coalition for a Democratic Workplace