



COALITION FOR A **DEMOCRATIC WORKPLACE**

September 12, 2022

Representative Bobby Scott
Chair
House Education and Labor Committee

Representative Virginia Foxx
Ranking Member
House Education and Labor Committee

Dear Chair Scott and Ranking Member Foxx:

In response to your upcoming hearing, *In Solidarity: Removing Barriers to Organizing*, the Coalition for a Democratic Workplace (CDW) writes to express our serious concerns with the Protecting the Right to Organize (PRO) Act (H.R. 842) and recent activity and policies pursued by the National Labor Relations Board (NLRB) and its General Counsel, Jennifer Abruzzo.

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 longstanding effort by some in the labor movement to make radical changes to the National Labor Relations Act (NLRA) without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 and has since focused on pushing back against regulatory overreach by the NLRB.

CDW has long opposed the PRO Act, which would do significant damage to the economy and infringe on the rights of workers and employers across the nation. As we explained in our [July 2021](#)¹ and [March 2021](#)² letters to Congress, this misguided legislation would drastically restructure America's labor laws, resulting in economic upheaval that would cost millions of American jobs, threaten vital supply chains, and greatly diminish opportunities for entrepreneurs and small businesses. The bill attempts to achieve its primary objectives of increasing union density and union leverage at the bargaining table without regard for the negative impacts the legislation would have on workers, businesses, and the economy. An [American Action Forum study](#)³ found that the bill's independent worker reclassification provision alone could cost as much as \$57 billion nationwide, while the joint-employer changes would cost franchises up to \$33.3 billion a year, lead to over 350,000 job losses, and increase lawsuits by 93%. A [national survey](#)⁴ conducted by Forbes Tate found that voters do not support many of the PRO Act's provisions:

¹ CDW July 2021 Letter sent to Senate HELP Committee is available at <https://myprivateballot.com/wp-content/uploads/2021/07/CDW-PRO-Act-Senate-Hearing-Letter-July-2021.pdf>.

² CDW March 2021 Letter sent to all members of Congress is available at https://myprivateballot.com/wp-content/uploads/2021/03/CDW-PRO-Act-Opposition-Letter_March-4_Update-1.pdf.

³ Study available at <https://www.americanactionforum.org/research/state-level-costs-of-the-protecting-the-right-to-organize-act/>.

⁴ Survey results available at http://myprivateballot.com/wp-content/uploads/2021/06/PRO_Act-National-Survey-Summary-6.28.21.pdf.



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- 70% of voters are concerned about the PRO Act abolishing state right-to-work protections;
- 75% are concerned about the bill's efforts to require employers to turn over employee personal information to union organizers without the consent of the employee;
- 67% are concerned about eliminating secret ballot elections in favor of a system where votes are revealed to everyone;
- 70% are concerned that the PRO Act limits workers' ability to work as independent contractors; and
- 65% are concerned the bill would upend the franchise business model, turning existing owners of franchises into employees of the brand and reducing new franchise ownership opportunities.

Moreover, many of the bill's provisions would implement policies that have previously been rejected on a bipartisan basis in Congress, overturned by the judicial system, and withdrawn by the federal agencies.

Additionally, CDW members have grown increasingly concerned with recent activity by the NLRB and General Counsel Abruzzo. Both the Board and General Counsel are pushing policy changes and enforcement positions that, like the PRO Act, attempt to increase union density without regard to the negative consequences those actions will have on workers, businesses, or the economy. For example, the General Counsel has advocated for limiting workers' access to secret ballots in union representation elections in favor of card check – a method by which employees cast their vote for or against a union in front of union organizers or coworkers that support the union. General Counsel Abruzzo has also advocated for new restrictions on how employers may communicate with employees about unions generally or the specific union seeking to represent the employees. Given employers are already prohibited from behavior that would “interfere with, restrain, or coerce employees” with respect to their right to act in concert or refrain from doing so (see NLRB description of this prohibited activity [here](#)), the General Counsel's position simply deprives employees of information about the union, collective bargaining generally, and their employer's perspective on issues that will impact the workplace. The General Counsel's position is also contrary to the provision in the NLRA and First Amendment that guarantee free speech rights. General Counsel Abruzzo has even argued that unacceptable (often racist or sexist) behavior in workplaces is protected by the NLRA if done as part of a labor protest. This position forces employers to choose to comply with either federal labor law or federal antidiscrimination law.

With respect to Board activity, throughout 2022, CDW has submitted amicus briefs in cases before the NLRB in which the Board is considering policy changes that do not comport with the NLRA and would negatively impact the economy and infringe on the rights of workers and employers. The following are some of those cases:



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- *American Steel Construction*⁵ – The Board is attempting to reinstate a policy that created “micro-units,” effectively gerrymandering representation elections in favor of unions and allowing unions to disenfranchise workers of their right to vote on union representation.
- *The Atlanta Opera*⁶ – The Board wants to limit the ability of workers to work independently by seriously restricting who can qualify as an independent contractor, regardless of binding judicial precedent and NLRA limitations.
- *Stericycle*⁷ – The Board is considering prohibiting standard workplace policies, such as expectations that workers behave respectfully towards each other and customers and prohibitions against the use of expletives, potentially creating unsafe and hostile workplaces.
- *Ralphs Grocery*⁸ – The Board is attempting to supersede the Federal Arbitration Act (FAA), despite Supreme Court precedent clearly indicating the Board does not have authority to challenge enforcement of arbitration agreements under the FAA.
- *Armaz Products*⁹ – In her brief in the case, General Counsel Abruzzo called on the Board to penalize employers for utilizing their NLRA-guaranteed right to challenge union election results, which will undeniably have a chilling effect on employers, leaving them afraid to exercise their rights under the Act.

In May, CDW filed a [motion](#)¹⁰ with the Board requesting they accept amicus briefs in *Cemex* after General Counsel Abruzzo used her brief in the case to call on the Board to overrule multiple longstanding and significant Board precedents. CDW urged the Board to hear from the regulated community on the issues the General Counsel raised. Regardless of the undeniable significance of the General Counsel’s preferred policy changes, the Board chose to reject our motion and proceed with the case without hearing from interested stakeholders.

Furthermore, the current chair of the NLRB, Lauren McFerran, is advocating for the adoption of electronic voting in union representation elections, which is, in essence, card check by another name. Electronic voting will needlessly expose workers to intimidation, harassment, and coercion as they vote and jeopardize the integrity of union representation elections. Please see our [recent report](#) outlining the various failed and costly attempts by governments and government agencies to implement electronic voting and the dangerous potential consequences of implementing electronic voting in union representation elections.¹¹

⁵ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/01/CDW-Brief_American-Steel_Jan-2022.pdf.

⁶ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/02/CDW_Brief_Atlanta-Opera_Feb-2022.pdf.

⁷ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/03/CDW-Brief_Stericycle_March-22.pdf.

⁸ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/03/Ralphs-Grocery_March-2022.pdf.

⁹ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/08/Armaz_Amicus-brief_Aug-2022.pdf.

¹⁰ Amicus brief available at https://myprivateballot.com/wp-content/uploads/2022/05/CDW_Motion-for-Amici-Invitation-in-Cemex.pdf.

¹¹ Report available at http://myprivateballot.com/wp-content/uploads/2022/07/Online-Voting-in-Union-Representation-Elections_Latest-Attempt-to-Eliminate-Secret-Ballots_July-2022.pdf.



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Most recently, the NLRB issued a new notice of proposed rulemaking radically altering the joint-employer standard under the NLRA. The rulemaking threatens to put at risk nearly every contractual relationship nationwide and would disincentivize larger companies from contracting, franchising, or licensing with small and local businesses. Our statement on the rulemaking can be viewed [on our website](#).¹² Additionally, the regulated community remains seriously concerned with the participation of Board Members Wilcox and Prouty in the issuance of this rulemaking. Prouty and Wilcox both engaged in past advocacy efforts related to the joint employer standard on behalf of their former employer, the Service Employees International Union. At the very least, there is a perception that these members have a conflict of interest on this issue; this should constitute grounds for their recusal from work on the joint employer standard. The Board has refused to release the analysis detailing why it believes Wilcox and Prouty are permitted to participate in the rulemaking and similar matters. This lack of transparency should not be acceptable.

Lastly, serious allegations have been raised against NLRB field staff that warrant an investigation. A whistleblower from within the NLRB has provided evidence that NLRB personnel colluded with labor organizers to influence union representation elections and unfair labor practice cases against a specific employer. This behavior cannot be tolerated, and a full investigation should be conducted. The NLRB is intended to be a neutral arbiter of federal labor law, but such allegations jeopardize the agency's credibility to fulfill its duties.

Thank you for your consideration of these matters. We look forward to working with the committee on these critical issues and ensure oversight over the Board and General Counsel moving forward.

Sincerely,

Kristen Swearingen
Chair
Coalition for a Democratic Workplace

¹² Statement available at <https://myprivateballot.com/2022/09/06/nlr-releases-radical-proposal-to-dramatically-expand-joint-employer-liability/>.