



COALITION FOR A **DEMOCRATIC WORKPLACE**

March 24, 2023

To Members of the U.S. Congress:

The Coalition for a Democratic Workplace (“CDW”) and the undersigned organizations write to express our opposition to the Richard L. Trumka Protecting the Right to Organize (“PRO”) Act (H.R. 20, S. 567). This bill would limit workers’ right to secret ballot elections, trample free speech and debate, jeopardize industrial stability, threaten vital supply chains, limit opportunities for small businesses and entrepreneurs, cost millions of American jobs, and greatly hinder the economy. 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policies that have previously been rejected on a bipartisan basis in Congress, overturned by the judicial system, and withdrawn by the federal agencies tasked with implementing them. We urge members of Congress to reject this legislation.

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 private sector labor policy, including possible legislative changes to the National Labor Relations Act (“NLRA”), regulatory actions by the National Labor Relations Board (“NLRB”), and federal court decisions implementing the NLRA.

The PRO Act is designed to push union representation on workers whether they want it or not. The bill does so by:

- limiting the right of employees to vote for or against union representation via secret ballots;
- limiting employers’ free speech rights, which effectively silences debate on the pros and cons of union representation generally or a particular union at issue;
- effectively allowing unions to choose a bargaining unit that maximizes its chances of winning a representation election rather than having the NLRB choose a unit that would promote a functional and stable bargaining relationship and does not exclude from the proposed unit other employees that share similar working conditions, hours, benefits, or supervision simply because they are unlikely to support the union;
- requiring employers to give union organizers employees’ personal information without approval from the employees themselves, including home addresses, phone numbers, email addresses, work shifts and locations, and job classifications; and
- eliminating right-to-work protections across the country, including in the twenty-seven states whose populations and representatives voted for and implemented such laws. Right-to-work laws allow workers to choose not to pay union dues to a labor organization whose policies and advocacy efforts do not align with their own beliefs and ensure workers can continue to work without being forced to join a union.

The PRO Act would disrupt or destroy certain business operations and significantly limit opportunities for small businesses and entrepreneurs. The PRO Act would do this by limiting the circumstances under which an individual can work as an independent contractor and expanding



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joint employment liability, which would discourage companies from franchising or contracting with smaller employers.

With respect to independent contractors, the PRO Act would limit opportunities for self-employment—gig work or otherwise—by imposing California’s recently adopted and failed “ABC test” for determining whether a worker is an independent contractor or employee. The ABC test makes it very difficult for someone to work as an independent contractor by defining the term “employee” very broadly. Nationwide implementation would forcibly reclassify millions of workers who routinely say they do not want a traditional employee relationship and prize the flexibility and autonomy independent contracting provides. The ABC test would harm those individuals wishing to work for themselves as well as the consumers and businesses that rely on the services that independent contractors provide.

As to joint employment, the PRO Act would replace the existing standard for determining when two separate entities are “joint-employers” under federal labor law with one that is vague and more expansive. Joint-employers are mutually responsible for labor violations committed against the jointly employed workers as well as bargaining obligations with respect to those workers. The current standard focuses on whether both potential employers have direct and immediate control over employees. The PRO Act standard would establish joint employment liability based on indirect or reserved control. It would overturn decades of established labor law and undermine nearly every contractual relationship, from the franchise model to those between contractors and subcontractors and suppliers and vendors. This new standard also would hamper businesses’ efforts to encourage “corporate responsibility” throughout their supply chains and business partners, as doing so would likely trigger joint-employer liability.

The PRO Act would also destabilize US industrial operations and the economy and threaten supply chains by reversing current bans on intermittent strikes and secondary boycotts. Under the PRO Act, unions would be able to conduct a series of short intermittent strikes to disrupt business operations if an employer doesn’t concede to their demands, potentially disrupting the economy and critical supply chains. One of the fundamental goals of the NLRA is to help ensure industrial peace, but intermittent strikes would leave unionized and nonunionized employers alike in constant fear of work stoppages.

Additionally, the PRO Act would rescind all restrictions against “secondary boycotts,” or activity used by unions to impose economic injury on neutral third parties, including consumers, companies, or other unions, that do business with a company involved in a labor dispute with the union. These activities were banned in the 1940s and 1950s after unions engaged in excessive and abusive tactics. Allowing secondary boycotts will once again expose all consumers, unions, and businesses to coercion, picketing, boycotts, and similar tactics.

These are only a few of the dangerous policies included in the PRO Act.



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In 2021, Forbes Tate Partners (FTP) conducted a survey of over 1,000 registered voters and found that respondents overwhelmingly were concerned with the various policies of the bill:¹

- 70% of voters are concerned about the PRO Act abolishing state right-to-work protections, forcing workers to pay union dues or risk losing their jobs;
- 57% believe workers should not be forced to join a union as a condition of employment;
- 75% are concerned about requiring 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;
- 68% are concerned about the bill interfering with small businesses' access to legal advice on labor law matters;
- 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.

The economic impact of the PRO Act would be catastrophic. An American Action Forum study² 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%.

CDW and the undersigned organizations urge the committee to reject this radical legislation and protect the rights of America's workers, small businesses, and consumers.

Sincerely,

Coalition for a Democratic Workplace
60 Plus Association
Air Conditioning Contractors of America
American Bakers Association
American Foundry Society
American Hotel & Lodging Association
American Pipeline Contractors Association
American Seniors Housing Association (ASHA)
American Society of Employers
American Staffing Association

¹ Survey results can be viewed at <https://myprivateballot.com/2021/06/30/national-survey-small-businesses/>.

² Study available at <https://www.americanactionforum.org/research/state-level-costs-of-the-protecting-the-right-to-organize-act/>.



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American Trucking Associations
Americans for Tax Reform
AR State Chamber of Commerce/Associated Industries of AR
Argentum
Asian American Hotel Owners Association
Associated Builders and Contractors
Associated Builders and Contractors Keystone Chapter
Associated Equipment Distributors
Associated General Contractors of America
Association of Bi-State Motor Carriers
Brick Industry Association
California Retailers Association
CAWA – Representing the Automotive Parts Industry
Center for Individual Freedom (CFIF)
Center for the Defense of Free Enterprise
Coalition of Franchisee Associations
Consumer Technology Association
FMI – The Food Industry Association
Franchise Business Services
FreedomWorks
Global Cold Chain Alliance
Heating, Air-conditioning, & Refrigeration Distributors International
HR Policy Association
ICSC
Independent Electrical Contractors
Industrial Fasteners Institute
International Foodservice Distributors Association
International Franchise Association
International Sign Association
International Warehouse Logistics Association
Iowa Association of Business and Industry
IPSE
Kansas Chamber
Kansas Retail Council
Littler Workplace Policy Institute
Manufactured Housing Institute
MEMA, The Vehicle Suppliers Association
Metals Service Center Institute
Missouri Retailers Association
Modular Building Institute
National Armored Car Association
National Association of Chemical Distributors
National Association of Electrical Distributors
National Association of Home Builders



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National Association of Manufacturers
National Association of Theatre Owners
National Association of Wholesaler-Distributors
National Club Association
National Council of Chain Restaurants
National Federation of Independent Business
National Franchisee Association
National Grocers Association
National Kitchen & Bath Association
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Public Employer Labor Relations Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Stone, Sand & Gravel Association
National Tooling and Machining Association
NATSO, Representing America's Travel Plazas and Truckstops
Nevada Manufacturers Association
New Hampshire Retail Association
North Carolina Retail Merchants Association
Open Competition Center
Outdoor Power Equipment and Engine Service Association
Plastics Pipe Institute
Plumbing-Heating-Cooling Contractors Association of California
Power and Communication Contractors Association
Precision Machined Products Association
Precision Metalforming Association
Retail Association of Maine
Retail Merchants of Hawaii
Retailers Association of Massachusetts
SIGMA: America's Leading Fuel Marketers
SNAC International
Technology & Manufacturing Association
TRSA – The Linen, Uniform and Facility Services Association
Truck Renting and Leasing Association
Truckers Integral to our Economy
U.S. Chamber of Commerce
Virginia Chamber of Commerce
Virginia Retail Federation
Virginia Trucking Association
Western Electrical Contractors Association



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Western Growers
Workforce Fairness Institute