COALITION FOR A
DEMOCRATIC WORKPLACE

Workplace Democracy Act: EFCA's Evil Twin

Just in time for the upcoming 2018 and 2020 election cycles, union lobbyists have unveiled legislation that would steamroll workers' rights, small and local businesses, entrepreneurs and the gig economy in an effort to make unionization easier and increase the number of dues paying members.

On May 9, Senators Bernie Sanders, Elizabeth Warren, Kirsten Gillibrand and Cory Booker—all expected Presidential contenders—along with Representative Mark Pocan introduced the deceptively named Workplace Democracy Act or WDA - S. 2810 and H.R. 5728. The union-backed bill would strip workers of the right to secret ballot elections, eliminate protections against forced union membership, interfere with a company's access to legal counsel and attorney-client confidentially and make it substantially more difficult for Americans to start their own business or work for themselves.

The WDA's very troubling provisions include the following:

- **Eliminates Workers' Free Choice and Privacy:** The WDA would replace private voting with the card check process as the method for determining whether employees want union representation. Card check subjects workers to peer pressure, intimidation, and harassment as employees are forced to "vote" for or against union representation in front of union organizers and co-workers. Every employee should have the right—**one they have had for over seventy years—**to vote privately on whether they want a union and should not be stripped of the basic democratic principals all Americans hold dear.

- **Codifies the Damaging Joint Employer Standard:** The WDA would codify the controversial 2015 NLRB *BFI* decision that **expanded** and **muddled** the standard for determining when two separate companies are "joint employers" under the NLRA. The *BFI* decision overturned **decades** of established labor law, **undermined** the relationships between brand companies and local franchise business owners contractors, and cast a cloud of **uncertainty** over business models that have created **millions of jobs** and allowed hundreds of **thousands of individuals** to achieve **the American Dream** of owning their own small business.

- **Limits Opportunity for the Self Employed and Sharing Economy:** WDA would import into the NLRA the California Supreme Court's recently adopted "ABC" test to determine whether a worker is an employee or an independent contractor. As it is difficult to qualify as an "independent contractor" under the "ABC" test, many workers could **lose the freedom** and flexibility of determining their own hours, what work they choose to do, and how they perform that work — including those who have chosen to work in the burgeoning gig economy.

- **Imposes Government Control Over Private Contracts:** Another hold over from the days of EFCA, WDA contains a provision that would **eliminate freedom of contract** by mandating compulsory, binding arbitration on the employer and the employees if the two parties do not reach a collective bargaining agreement within the first 120 days of negotiations. Under the WDA, an arbitrator, who is unfamiliar with the business operations, would impose terms that are binding upon both parties, even if one or both find those terms unacceptable.

- **Breaches Attorney Client Confidentiality:** WDA would amend federal law to include many of the provisions of the failed 2016 Department of Labor (DOL) "persuader" regulation under the Labor-Management Reporting and Disclosure Act (LMRDA). The regulation was enjoined by a

federal court and is currently being rescinded by DOL. Like the persuader rule, the WDA provision would **force a breach of attorney client confidentiality** and make it more difficult for employers to access legal counsel or other expert advice on complex labor and employee relations issues during union organizing drives. The court that struck down the rule found it **"defective to its core**".

- **Strips Away Employees' Right-to-Work Protections:** WDA would repeal Section 14(b) of the NLRA and thus deprive workers across the country of the right to choose whether to join a union by abolishing right-to-work laws in favor of compulsory unionization.

- **Brings Coercion, Picketing, and Boycotts into the Home and onto Main Street:** WDA would rescind all restrictions in the NLRA that currently make it unlawful for unions to impose economic injury on "neutral" third parties that are not involved in an underlying labor dispute, such as consumers, companies or other unions that do business with the company involved in the labor dispute. The WDA would eliminate "neutral" status by rescinding all "secondary" prohibitions, which would expose all consumers, employers, suppliers, vendors, franchisors, franchisees, and all other businesses to coercion, picketing, boycotts and similar tactics, regardless of whether they have any dispute with any union.

- **Eliminates Limits on Recognitional Picketing and Anticompetitive Behavior — Allowing Unions to Harm Rather than Organize Companies:** The WDA would eliminate provisions in existing law that limit unions to 30 days of recognitional picketing, unless the union files a representation petition seeking an NLRB election. Under the WDA, unions could engage in recognitional picketing without any limitation — **causing injury to employers, consumers, suppliers and customers** — without filing any petition, at any time, that would permit employees to vote on whether they want union recognition. If "secondary" boycotts become lawful, unions may engage in anti-competitive tactics directed at particular companies, with immunity from prosecution under federal anti-trust statutes and state laws against unfair competition.

Forcing workers into unions through intimidation and mandates and stripping rights to legal counsel and private voting will not lead to stable labor relations and is not a solution any politician should support. This bill "The Workplace Democracy Attack" is a bad deal for American workers, businesses and consumers.