



April 5, 2023

The Honorable Bernie Sanders
Chair
Senate Committee on Health, Education, Labor,
and Pensions
Washington, DC 20510

The Honorable Virginia Foxx
Chair
House Committee on Education and the
Workforce
Washington, DC 20515

The Honorable Bill Cassidy
Ranking Member
Senate Committee on Health, Education, Labor,
and Pensions
Washington, DC 20510

The Honorable Bobby Scott
Ranking Member
House Committee on Education and the
Workforce
Washington, DC 2051

Dear Chair Sanders, Ranking Member Cassidy, Chair Foxx, and Ranking Member Scott:

I write to you on behalf of the National Small Business Association (NSBA). The NSBA advocates for the needs of millions of small businesses nationally through its network of over 65,000 small companies. Representing companies of all sectors in every corner of the country, NSBA works on a proactive and bipartisan basis to improve the economic climate for small business growth and success.

We write to you to express caution around the *Protecting the Right to Organize ("PRO") Act* (H.R. 20, S. 567), which, if enacted will pose far-reaching negative impacts on workers, small businesses, employers, contractors, and unions alike.

Impact on Small Business Owners

The *PRO Act* would enable secondary picketing and protesting from unions at storefronts that happen to sell a brand or item affiliated with a union strike or altercation, enabling protestors to direct aggression towards small businesses on Main Street. Known as secondary boycotts, the *PRO Act* would make it legal for protestors to disrupt the flow of business and commerce by granting protections to protests at individual storefronts that have no legal affiliation to the boycott or union dispute at hand.

The Act also implements a slew of new and daunting regulatory changes that businesses must comply with, increasing the amount of paperwork and red tape that is associated with keeping a small business in compliance with the law. At a time in which business owners are just beginning to step out of the

economic turmoil faced during the pandemic, the Act would place more barriers on small business owners who are simply trying to keep their doors open and heads above water.¹

Impact on Independent Contractor Status

The *PRO Act* is especially concerning for our membership base, as many small business owners in our network utilize independent contractors or are independent contractors themselves. Coupled with the rulemaking at the NLRB on changing independent contractor classification, the *PRO Act* would change business as we know it today. To that end, the *PRO Act* would codify the strict “ABC” test for determining independent contractor status.² The ABC test makes it very difficult for workers to qualify as independent contractors, resulting in many small business owners and employees losing their status as independent contractors. Therefore, the *PRO Act* would make it increasingly difficult for small businesses utilizing or operating as independent contractors to retain autonomy over their business model. Under this practice, employers that currently contract for leased or temporary workers may have to reassess or change their business practices to compensate, skewing calculated growth trajectories and strategies for small businesses in our network.

Impact on Joint-Employer Standards and Franchise Ownership

The NSBA is a supporter of the franchise model as a means to small business ownership. However, the *PRO Act’s* provisions would relegate franchisees as employees of the national brand, thus discouraging entrepreneurial individuals from choosing to own and operate a franchise in the pursuit of entrepreneurship. If the law defines these franchisee owners as employees, it will discourage them from pursuing the American Dream through franchise opportunities. As a result of this legislation, in California, national franchise brands are already considering the option to run their fully owned stores themselves, rather than empower local entrepreneurs.

In the U.S. franchising currently accounts for more than 733,000 businesses that employ over 7.6 million Americans.³ These franchises are overwhelmingly run on a small business scale, by determined local entrepreneurs. If enacted the legislation would increase the liability of franchise brands by shifting responsibility for labor violations incurred by a local owner to the national brand, which will decrease the availability of franchisee opportunities for entrepreneurs across the country for fear of litigation.

Overall, the joint-employer standards created under the *PRO Act* are too vague, too far reaching, and too binding. If passed, the legislation would significantly reduce the number of franchisees (and entrepreneurs) in the country as a result.

Impact on the Freedom to Choose Unionization

Not least of all, under the *PRO Act*, employees across the country would be required to contribute fees to a labor organization, eliminating the freedom to choose whether workers want to fund union activity despite existing state laws.⁴ Business owners with employees in unions would be required to submit personal employee information such as cell phone numbers, email addresses, and physical addresses to labor unions without an employee's consent.

¹ <https://nrf.com/blog/4-ways-pro-act-hurts-small-businesses>

² <https://myprivateballot.com/issues/pro-act/>

³ <https://www.forbes.com/sites/jeffbevis/2019/03/27/franchises-drive-job-and-economic-growth/?sh=20787d0b7bb0>

⁴ <https://myprivateballot.com/issues/pro-act/>

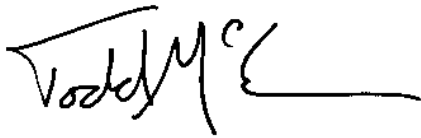
In removing employee input in union activity, the PRO Act also removes employer input in setting how the union employee election proceedings take place, granting the NLRB discretion to allow unions to determine the parameters of elections such as dates, mail-in versus in-person, and location. Depriving employees of voting rights will encourage unions to file charges in order to gain representation without a majority consensus among said employees, effectively disenfranchising employees who do not support unionization.⁵

While the NSBA remains an advocate for labor policy that is conducive to better business operations, employee benefits (like healthcare and retirement options) and sound employee-employer relationship building, the *PRO Act* is not the way to achieve any of those goals. The *PRO Act* goes against the independence of small business owners and their ability to conduct business operations that are beneficial to their employees, customers, and business practices. We urge Congress to reconsider the negative impacts of the Act on our nation's smallest businesses and look forward to working with members of Congress to put forth alternative recommendations to improve labor policy for all.

We thank you for your time and consideration of our priorities and we look forward to discussing this further with your office.

If you have any questions or concerns, please do not hesitate to reach out to me directly at tmccracken@nsba.biz.

Yours truly,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken
President & CEO

CC: Members of the United States Congress

⁵ <https://www.natlawreview.com/article/labor-law-reform-horizon-ten-things-to-watch-under-pro-act>