



October 16, 2023

The Honorable Bob Good
Chairman
U.S. House Subcommittee on Health,
Employment, Labor, and Pensions
2176 Rayburn House Office Building
Washington, DC 20510

The Honorable Mark DeSaulnier
Ranking Member
U.S. House Subcommittee on Health,
Employment, Labor, and Pension
2101 Rayburn House Office Building
Washington, DC 20510

Chairman Good, Ranking Member DeSaulnier and Members of the U.S. House Subcommittee on Health, Employment, Labor, and Pensions:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 members, I appreciate the opportunity to comment on the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions hearing, “Protecting Workers and Small Businesses from Biden’s Attack on Worker Free Choice and Economic Growth.”

In the face of an increasingly hostile regulatory environment for America’s small businesses, ABC appreciates the efforts of the HELP subcommittee to highlight these barriers and burdens on workers and businesses throughout the United States. The House has also introduced several key bills that would provide much-needed protection and clarity for our nation’s job creators and workforce. ABC is proud to support these legislative efforts and urges members of this subcommittee to pass the bills listed below.

The Employee Rights Act

Introduced by Rep. Rick Allen, R-Ga., the ERA (H.R. 2700) has a primary objective to provide essential protections for workers’ rights, choices and freedoms. This bill stands in stark contrast with the so-called Protecting the Right to Organize Act (H.R. 20), which would drastically restructure America’s labor laws, damage the economy, cost millions of American jobs, threaten vital supply chains and greatly diminish opportunities for entrepreneurs and small businesses.

Most notably, the ERA would ensure that any effort to organize a workplace or hold a strike is subject to a private ballot vote. Secret ballot elections ensure that workers have a privacy-protected vote that reflects their true preference for unionization in their workplace.

The ERA is necessary now more than ever, as the National Labor Relations Board’s recent decision in Cemex Construction Materials Pacific LLC imposes a new framework that greatly expands the Board’s ability to impose unions on employees without a secret ballot election, replacing employees’ rights to a private ballot with a card check system that requires the public collection of signatures, or “cards.” The Board’s decision overrules precedent that has stood for over half a century. ABC believes that efforts to eliminate a secret ballot can expose workers to intimidation and coercion and that votes for representation in the workplace must uphold the standard of a private, secret ballot.

Additionally, the ERA would protect workers from unwanted political manipulation and safeguard employee privacy. Included in the ERA is a requirement that employees consent to their union dues being used for anything other than collective bargaining efforts. Many workers join a union in hopes that their dues will help improve their workplace; however, hundreds of millions of dollars in union dues are spent each year supporting political candidates and causes. The ERA would require workers to consent to their union dues being used for other purposes, including political advocacy.

The ERA also limits the amount of employee personal information a union receives during an organizing drive and makes it an unfair labor practice for the union to use employees' personal information for any reason other than a representation proceeding. Employees currently have no ability to prevent their personal information from being disclosed to the National Labor Relations Board and to the union that seeks to represent them.

The Save Local Business Act

While also included as a provision in the ERA, the SLBA (H.R. 2826), introduced by Rep. James Comer, R-Ky., would ensure clarity and certainty for small business owners and workers. It would protect the traditional contractor and subcontractor relationship in construction and give more Americans the opportunity to realize their dream of starting their own business. This legislation would also protect businesses from unnecessary involvement in labor negotiations and disputes involving workplaces in which they do not have direct control and will protect hundreds of thousands of small and local businesses and allow them to grow American jobs.

The NLRB has proposed to greatly expand joint-employer liability under the National Labor Relations Act, which will cause confusion and impose unnecessary barriers to and burdens on contractor and subcontractor relationships throughout the construction industry. As a result, contractors may be vulnerable to increased liability, making them less likely to hire subcontractors, most of whom are small businesses.

The Modern Worker Empowerment Act

This bill (H.R. 5513), introduced by Rep. Elise Stefanik, R-N.Y., defends worker choice and independent contractors by providing much-needed clarity and guidance to the proper classification of contractors under the Fair Labor Standards Act. H.R. 5513 promotes certainty for employers, independent contractors and employees. Plus, the bill's two-factor test, based on control and opportunity for profit or loss, will be easy to comply with and provide workers much-needed flexibility and choice.

The U.S. Department of Labor's independent contractor proposed rule would disrupt the work of legitimate independent contractors and have a devastating effect on an essential component of the construction industry. Independent contractors provide specialized skills, entrepreneurial opportunities and stability during fluctuations of work common to construction. The DOL's rule would only increase the confusion and litigation chaos that has burdened the construction community for years.

The construction industry continues to face challenging economic conditions, including high materials costs that have skyrocketed more than 40% since the start of the COVID-19 pandemic, snarled supply chains and a skilled labor shortage of more than half a million in 2023. The regulatory agenda of the Biden administration will only serve as another burdensome cost on small businesses, exacerbate these headwinds and undermine taxpayer investments in much-needed infrastructure projects.

ABC appreciates the opportunity to comment on this important hearing and looks forward to working with the subcommittee on these critical issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen". The signature is written in a cursive, flowing style.

Kristen Swearingen
Vice President, Legislative & Political Affairs