



December 11, 2023

Dear Representative,

On behalf of more than 3 million of Americans for Prosperity activists across all 50 states, I write in support of the Employee Rights Act today, which was introduced by Senator Tim Scott (R-SC) and Representative Rick Allen (R-GA) earlier this year – but has recently become more urgent than ever.

Just prior to Labor Day, in a reckless giveaway to labor unions, the Biden administration’s National Labor Relations Board (NLRB) took away the right to secret ballot elections for workers at many workplaces through its *Cemex Construction Materials Pacific* decision. To make matters worse, the NLRB has also published a final rule to institute ambush elections that give little to no time for businesses to communicate with their employees about unionization before elections.

Additionally, the NLRB has already shifted its employment test for independent contracting through its *Atlanta Opera, Inc.* decision, subjecting more workers to unionization, and both the NLRB and Department of Labor are soon to publish rules that further undermine self-employment and small business entrepreneurship through a complicated and damaging joint employer standard.

The Employee Rights Act is the only comprehensive conservative labor reform bill in Congress that would expand employee rights, protect workers’ flexibility, and improve representation in the workplace. Importantly, the bill includes stopping the *Cemex* decision right in its tracks by guaranteeing the right to secret ballot union elections and instituting pro-worker and pro-entrepreneur standards for self-employment and small businesses, thereby blocking implementation of Biden’s labor bureaucrats’ other recent rules as well.

The Employee Rights Act also stands in stark contrast to the so-called “PRO” Act passed by the Democratic majority House of Representatives last Congress, which imposes sweeping and unprecedented restrictions on worker and employer rights alike.

The Employee Rights Act puts workers first by:

- Requiring secret ballot elections for union organizing so that Americans can vote on their representation in the workplace the same way they vote for their representation in Congress.



- The PRO Act makes it easier to sidestep secret ballots, allowing union organizers to coerce workers into so-called “card check” signatures, which have resulted in well-documented harassment and intimidation of workers. The Cemex decision does by NLRB fiat what the PRO Act sought to do in law – deprive workers of secret ballot elections.
- Protecting independent contractors, like those in the sharing economy – the vast majority of whom prefer freelancing over traditional employment. Independent contracting has grown enormously, particularly through the pandemic. More than 70 million Americans now work as independent contractors, spanning every congressional district in the country.
 - The PRO Act codifies California’s “ABC” test, which functionally eliminates independent contracting as we know it and has worsened the supply chain crisis. The Biden administration is working to narrow independent contracting through the NLRB and the Department of Labor.
- Protecting local small business franchise operations by codifying the correct joint-employer standard, which has bipartisan support in Congress. Franchise businesses employ more than 8 million Americans across every congressional district in the country.
 - The PRO Act includes a definition of joint employment that functionally eliminates franchising and vendor relationships as we know it, and the Biden NLRB is creating a standard that is even worse – vaguer and more expansive – than that of the PRO Act or the Obama NLRB.
- Allowing employees to decide for themselves if they wish for their private, personal information – such as home address and cellphone number – to be shared with union organizers. The bill also makes it an unfair labor practice for a union to share elsewhere or mishandle this information. This protection is even more important in light of the recent Cemex decision eliminating secret ballots.
 - The PRO Act requires that several pieces of private information be handed over to union organizers without employee consent. Testifying in favor of the PRO Act in 2019, former AFL-CIO President Richard Trumka said that unions need this information to confront workers “at their home” and “at the grocery store,” disregarding employee privacy.
- Requiring that unions receive “opt-in” permission before using member dues for political purposes. Right now, even in right-to-work states, workers must endure a lengthy and confusing process every year to be refunded for political expenses they do not wish to



support. Worse, unions also use explicitly non-political dollars – union dues intended for collective bargaining and representational purposes – to support political advocacy organizations.

- In the 24 states without a Right to Work law, workers have no way to opt out of funding causes and candidates they do not support, and in right-to-work states make it prohibitively difficult. In addition to their election spending, since 2010 unions have sent nearly \$2 billion in member dues to progressive advocacy organizations without consent.

As the bill's name suggests, these reforms expand employee rights, not special interest power. That is why the Employee Rights Act's key provisions are supported by a significant majority of the American people, including both Republicans and Democrats, independents, Hispanics, and union households.

AFP has been proud to lead the effort for worker freedom in the states and at the federal level for more than a decade. Unfortunately, worker freedom remains under attack in Washington from those who believe that the only way to help workers is through union coercion. The Employee Rights Act represents a strong, positive alternative to the harmful Biden agenda now being implemented by his agencies outside of Congress. We applaud Senator Scott and Representative Allen for their leadership on behalf of America's workers and we strongly urge you to co-sponsor their important legislation.

Sincerely,

Akash Chougule
Vice President, Americans for Prosperity