March 3, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

RE: Oppose PRO Act, H.R. 842

Dear Speaker Pelosi and Minority Leader McCarthy:

On behalf of the Associated General Contractors of America (AGC), a national construction trade association representing more than 27,000 firms including America's leading union and open-shop general contractors, specialty contractors, service providers, and suppliers, I write in opposition to H.R. 842, the Protecting the Right to Organize (PRO) Act.

While the bill purports to help workers, it actually strips away many of their rights and privacies while expanding opportunities to coerce law-abiding employers, thereby hurting the economy and upsetting a delicate balance of rights and restrictions established by the National Labor Relations Board (NLRB), the courts, and Congress. The PRO Act has become organized labor's wish list of labor law changes with little or no regard to its impact on employers that provide good-paying jobs and create economic opportunities for their employees.

The PRO Act includes dozens of drastic changes to established law and practices in the construction industry. Among the most significant of these changes would remove the prohibition of secondary boycotts; promote slowdowns and intermittent strikes; impose a new, modified form of card check; codify the "quickie election" rule for representation elections; codify an overly broad new joint employer standard; enact an overly restrictive independent contractor test; change attorney-client confidentially to make it harder for employers to secure legal advice on complex labor matters; and mandate interest arbitration. Taken together, many of these changes will be disruptive to both union and nonunion employers.

The bill strips away critical secondary boycott protections that prevent a union from unfairly embroiling a neutral employer in the union's dispute with another employer (the "primary" employer) through threatening, coercive, or restraining conduct. This would wreak havoc in the construction industry where multiple neutral employers may work side-by-side with the primary employer at the same jobsite or may depend on doing business with the primary employer for their very survival.

Additionally, the bill removes important limitations on picketing that are designed to prevent a union from forcing employers or employees to recognize it as the employees' bargaining representative after the union has lost a representation election or when a rival union already represents the employees.

Among concerns for union contractors, the PRO Act would promote slowdowns and intermittent strikes. These short duration hit-and-run tactics can be especially disruptive as sporadic work stoppages are difficult for employers to anticipate and respond to and thus have long been deemed unlawful.

Another concern of the PRO Act is that it imposes a form of "backdoor card check" that undermines secret ballot elections when determining union representational status. The bill sponsors claim the bill maintains secret ballot elections, but in actuality, the NLRB can certify the union without a successful election. This could occur if a union loses an election, the NLRB can declare an employer interfered and thereby negate the election results. The union can then present signed authorization cards of a majority of employees and the NLRB can certify the union.

The bill also codifies a NLRB rule on changes to representation elections – often called the "quickie election" or "ambush election" rule – that denies employers due process and ample time to prepare for an election, while limiting workers' access and time to consider relevant information. This rule is particularly impractical in the construction industry due to the complexity of determining appropriate bargaining and voter eligibility in the industry, and due to the decentralized nature of construction workplaces operated by the same employer.

Another significant concern of the bill is the broadening of the definition of joint employer from those that share direct control over terms and conditions of employment to those with indirect control. Companies that are joint employers may be held jointly responsible for legal compliance and collective bargaining obligations related to the jointly-employed workers. These changes can disrupt the way the industry operates and could have a particularly destabilizing impact on well-settled subcontracting practices that have been in place to dictate scheduling and protect worker safety.

Furthermore, the bill's overly restrictive independent contractor test has the potential to create greater disruption. AGC strongly opposes the misclassification of employees as independent contractors, but the bill's provisions go so far as to prevent legitimate independent contractor relationships that are widely used and valued by many individuals and companies in such industries as construction. Congress could better serve the industry by encouraging enforcement agencies to offer additional compliance assistance to help navigate the ever-changing employment landscape.

Lastly, another change to established labor law is the elimination of the "advice" exemption to the reporting obligations of labor relations consultants (including attorneys and trade associations) and of the employers who hire them. Such action would have a chilling effect on an employer's ability to seek professional guidance on the many rights, obligations, and restrictions of the National Labor Relations Act, resulting in less-informed employers and employees, and a higher incidence of unfair labor practices.

For these reasons and others, AGC strongly opposes the PRO Act and urges your opposition to this bill.

Sincerely,

James V. Christianson
Vice President, Government Relations