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February 26, 2021

The Honorable Bobby Scott  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
2176 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
2101 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Scott and Ranking Member Foxx:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in opposition to H.R. 842, the *Protecting the Right to Organize (PRO) Act of 2021*. This radical legislation would dramatically upend long-standing employment law in favor of labor unions at the expense of small businesses and employees.

The *PRO Act of 2021* allows unions to participate in secondary boycotts throughout the supply chain, which would inflict economic damage on small businesses that have nothing to do with a labor dispute. Ninety-two percent of NFIB members oppose legislation that allows unions to picket an employer's suppliers and customers during a labor dispute.

This bill requires employers to provide personal contact information for employees to union organizers, which would infringe upon the employer-employee relationship. Ninety-three percent of NFIB members oppose requiring employers to provide the personal contact information of their employees to union organizers.

The legislation restricts an employee's ability to accept or reject union representation through a secret ballot. This process would implement a legal loophole which would allow labor unions to pressure employees to sign a card in public to join a union rather than allowing individuals to vote privately.

The *PRO Act of 2021* codifies the National Labor Relation Board's (NLRB's) *Browning-Ferris Industries* joint-employer standard, which would threaten to compromise the small business-subcontractor relationship. Eighty-nine percent of NFIB members oppose requiring a contractor to be responsible for a subcontractor's hiring practices. This legislation also adopts

a strict version of California's "ABC" independent contractor test, which would significantly curtail the rights of small business owners to hire independent contractors. Even California realized that this test would be unworkable for many industries and elected to carve out some of the more affected industries. The *PRO Act of 2021* contains no exceptions. Ninety-five percent of NFIB members believe small businesses should be able to hire independent contractors to perform tasks essential to their business.

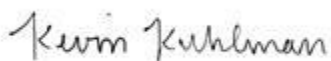
This legislation abolishes state "Right to Work" laws by eliminating section 14(b) of the National Labor Relations Act (NLRA) and would require all employees in unionized workplaces to contribute fees to a labor organization even if the employee is not a member of the labor organization.

This bill imposes reporting requirements that would breach small business owner-attorney confidentiality. Ninety-one percent of NFIB members oppose limiting the ability of employers to speak to their workers during union campaigns and elections. It also imposes binding arbitration on employers when they fail to reach an agreement with a union within 120 days, which would empower an arbitrator with no business expertise to render a decision.

The *PRO Act of 2021* contains radical policy proposals that are not only opposed by small business owners but have been dismissed in the courts and rejected by Congress for decades. At a time when 15% of small businesses may not survive another six months,<sup>1</sup> Congress should not be passing extreme anti-small business legislation like the *PRO Act of 2021*.

NFIB strongly opposes H.R. 842, the *PRO Act of 2021*, and urges the Committee to reject its consideration.

Sincerely,



Kevin Kuhlman  
Vice President, Federal Government Relations  
NFIB

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<sup>1</sup> Holly Wade, *Covid-19 Small Business Survey (15): PPP, ERTC, the Economy, the Vaccine, and Minimum Wage*, NFIB Research Center, January 28-31, 2021, [https://assets.nfib.com/nfibcom/Covid-19-15-Questionnaire .pdf](https://assets.nfib.com/nfibcom/Covid-19-15-Questionnaire.pdf).