ALAN WILSON
ATTORNEY GENERAL

April 2, 2021

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Chair
Senate Committee on Health, Education, Labor and Pensions
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Burr
Ranking Member
Senate Committee on Health, Education, Labor and Pensions
217 Russell Senate Office Building
Washington, DC 20510

RE: Objection to H.R. 842 "Protecting the Right to Organize Act of 2021"

Dear Senators:

Our Nation has always been one of opportunity that rewards individual choice, ingenuity, and initiative. Our laws have long preserved the ability of employees to speak for themselves, to make informed decisions, and to work without being forced to pay fees to third parties. Congress is currently considering legislation, however, that, if enacted, would undermine state laws, overturn longstanding federal law, create Constitutional concerns, and unfairly coerce employees into a union environment rife for abuse of individual employees.

H.R. 842, also known as the "Protecting the Right to Organize Act of 2021" or "PRO Act," proposes more than 20 significant changes to the laws governing labor unions, generally making it much easier to force unionization of employees and mandatory dues collection. To accomplish that goal, the legislation would re-write the National Labor Relations Act as well as negate state laws protecting employees against having to pay dues in order to keep their jobs.

States have long protected the right of employees to work without having to pay money to a union in order to get or keep their jobs. Since the 1940's, with passage of the Taft-Hartley Act, 29 U.S.C. §§ 141, *et seq.*, a majority of states have enacted Right-to-Work Laws. Employees in those states have the freedom to choose whether to become a full dues-paying member of a union. Unions have opposed Right-to-Work Laws from their inception. Driven by financial needs or other

concerns, they have challenged the ability of states to have Right-to-Work Laws, but the United States Supreme Court has repeatedly rejected union arguments seeking to overturn them. For example, in *Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co.*, 335 U.S.525 (1949), a union claimed that Right-to-Work Laws were unconstitutional, essentially arguing that the right to assemble gave the union a "right to drive from remunerative employment all other persons who will not or cannot participate in union assemblies." *Id.* at 531. The Supreme Court quickly, and in our view correctly, discarded the union's arguments and ruled in favor of Right-to-Work Laws.

The PRO Act is the latest union attempt to undermine the rights safeguarding employees through the Right-to-Work Laws adopted by 27 states. For example, Section 111 of the PRO Act would condone union contracts that make employees pay fees to a union "as a condition of employment ... notwithstanding any State or Territorial law." Such a provision, if enacted, would erase important legal protections for employees and send a cascade of money to unions, despite objections by employees. Forcing someone to be a member of a union against their will and then confiscating their pay for the gain of union leadership is the antithesis of the democratic principles on which this country was founded.

Other concerning provisions of the PRO Act include (1) Federal imposition of the so-called "ABC Test" for distinguishing employees from independent contractors – a proposal recently rejected by 58 percent of California voters; (2) the legalization of secondary boycotts by unions, tactics which have been outlawed since passage of the Taft-Hartley Act; (3) a mandate that employers turn over sensitive personal information of employees to union organizers, including home addresses, home and cell phone numbers, and personal email addresses, without the employees' consent; (4) an overbroad definition of "joint employer" that would, among other things, cause the employees of franchisees to be deemed employees of the franchisor, regardless of how the franchisor and franchisee have chosen to structure that relationship by contract ; and (5) giving unions the right to use an employer's private email system for organizing and other "protected concerted activity." These are just a few of the many unacceptable provisions in the bill, which collectively threaten to undercut the rights of private sector employers, with predictable adverse impacts on employment and productivity, as well as impair the rights of employees.

As the Attorneys General for our respective states, we are responsible for upholding the laws for the benefit of the citizens of our states. One such law guards the freedom of employees to keep their jobs regardless of whether they decide to pay union dues or not. If enacted, the PRO Act would abruptly end seventy-five years of freedom by ending the Right-to-Work Laws in 27 states. Accordingly, we respectfully urge Congress not to enact the PRO Act, particularly those provisions negating the Right-to-Work Laws.

Respectfully,

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