

Enforcing the Requirement to Organize Act



By Paul Engel

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- Does the PRO Act do what it claims, protect the right to organize, or is it another attempt to socialize labor?
- Once again, Congress is ignoring the Constitution and claiming the power to not only regulate employment, but to tell people whether or not they can work for themselves.
- Based on California's AB5, the PRO Act would further destroy small businesses and independent workers.

In the House, it's called it the *"Protecting the Right to Organize Act"*. What it should be called is the *"Enforcing the Requirement to Organize Act"*. While they claim that the act is to protect the right to organize, a look at the language of the bill shows that this is not about protecting the right to unionize, but forcing people to do so. Once again we see the federal government illegally regulating employment, coercing people to join a collective, and doing all it can to destroy small business.

The Protecting the Right to Organize, or PRO Act, claims to amend the National Labor Relations Act (NLRA) to protect workers. Let's start at the beginning, with the NLRA.

The National Labor Relations Act

The denial by some employers of the right of employees to

organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce...

NATIONAL LABOR RELATIONS – 29 U.S.C. §151

Here we see the first problem with the NLRA. Congress does not have the power to regulate commerce, only...

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S. Constitution, Article I, Section 8, Clause 3

That means the NLRA is unconstitutional and therefore void.

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed.

Norton v. Shelby County :: 118 U.S. 425 (1886)

While the NLRA lists several reasons why employees may wish to organize and collectively bargain, that doesn't mean Congress has the legal authority to regulate it. In fact, the Constitution strictly prohibits them from doing so.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Constitution, Amendment X

Furthermore, the reasoning behind the NLRA is both self-serving and flawed. First, it claims that employees have a right to organize, which is true, but the act completely ignores the rights of the employer to determine who they will employ and under what circumstances. While the employees can

associate however they wish, they do not have the right to force employers to comply with their demands or to have government join their side of the negotiations.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

NATIONAL LABOR RELATIONS – 29 U.S.C. §151

While Congress claimed that experience has proven that laws protecting the right of employees to organize safeguards commerce, government regulation tends to destroy commerce in red-tape, regulations, and political agendas. Before you think that Congress was completely one-sided when it decided to draft the NLRA, it wasn't simply to protect employees from businesses.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

NATIONAL LABOR RELATIONS – 29 U.S.C. §151

Congress keeps referring to experience proving something, but they never actually point to any experience to prove their point. Yes, there has been a history of strikes by labor, but

they didn't stop with the passage of the NLRA.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

NATIONAL LABOR RELATIONS – 29 U.S.C. §151

It may be the policy of the United States to eliminate the causes of disruptions to the free flow of commerce, but it's not a legal one. Experience has shown us that rarely does Congressional meddling in things they are not legally allowed to improves the situation. Instead, it usually makes things worse. Take for examples, the Affordable Care Act, the Social Security Act, the Patriot Act, and even the Inflation Reduction Act. Not only have all of these pieces of legislation claimed to protect Americans, but in the long run have made things worse. Worse yet, all of them are outside of the powers delegated to the United States, and therefore void.

So if the NLRA is unconstitutional, and therefore no law at all, any amendments to it would be, at best, putting lipstick on a pig. Sadly, the PRO Act is far worse then that.

The Protecting the Right to Organize Act

Probably the most onerous parts of the so called PRO Act is the idea that Congress gets to define who is and isn't an employee.

(b) Employee.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the

following: "An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

"(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

"(B) the service is performed outside the usual course of the business of the employer; and

"(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed."

[The Richard L. Trumka Protecting the Right to Organize Act of 2023](#)

Rather than protecting the right to organize, this act starts by depriving the right of people to work independently. The law basically says that you are an employee unless the government says you aren't one. California tried this already with AB5, which took effect in January, 2020. AB5 was an attempt by California to regulate companies like Uber and Lyft that hire large numbers of "gig workers". The problem is, the PRO Act, like AB5 before it, assumes that everyone wants to be an employee. Many people who work at these companies don't want to work for them, not to mention all of the independent truck drivers and freelancers who AB5 did, and the PRO Act would, suck up into their socialist utopia of large corporations and unions. While it may not be the intention of the PRO Act, one effect would certainly be to cripple the independent workforce.

The PRO Act not so much protects the right of employees to organize, but forces companies to bow to the demands of the unions.

Whenever the [National Labor Relations] Board directs an

election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than 2 business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees.

The Richard L. Trumka Protecting the Right to Organize Act of 2023

With all of the experience we have with government overreach, does anyone really think this legislation will do what its authors claim it will?

Conclusion

What we see here is another attempt by those in Congress to socialize our society by removing the choices of the individual in favor of the collective. Little concern is given to those who do not wish to collectively bargain or who would prefer to freelance their skills rather than work for someone else. Even less concern is given to the property of the employers that Congress has already taken and wishes to further control.

Consider the states where individuals do not have their right to NOT organize is not protected? Where people are forced to join a union, or in some cases, merely to pay dues, even if they don't want the representation. If you are forced to be an employee rather than a freelancer, and the state forces you to join a union, are you really free?

It really shouldn't surprise anyone that this legislation is named after a union activist. After all, union leaders and the bureaucratic state have been leading us, hand in hand, toward collectivism for decades. As with so many other things, it's not that unions are good or bad, but that they are forced, or at least coerced, upon the American people.

Will Congress ever learn not to exceed its mandate and infringe on the rights of the American people? Not until We the People start firing those who keep doing so, and hire better representation for ourselves. Until then I suggest you both educate yourselves and your state representatives about the limitation of the powers of Congress, and their responsibility to support the Constitution and protect the American people from all enemies, both foreign and domestic.

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