

Don't take my choice away

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My dad was always pro-union. He worked in a rail yard, then became an electrician. I recall he credited a union he belonged to with helping him start to make a successful career that led him to electrical inspector positions at a couple of large cities, including Beverly Hills.

When I look at corporations like Amazon and Walmart and the wages they pay their workers, I think unions might be able to help those low-income workers make a better life for themselves and their families.

In my industry, newspaper employees, especially at papers owned by bottom-line-ruled hedge funds, have turned more often to forming or joining unions to help them survive.

While union membership has declined for decades, I usually support the goals of unions.

As a journalist, I've always believed in the "seen but not heard" approach. That's especially true when it comes to politics. Present a balanced and factual story but keep your personal beliefs and stances out of your stories.

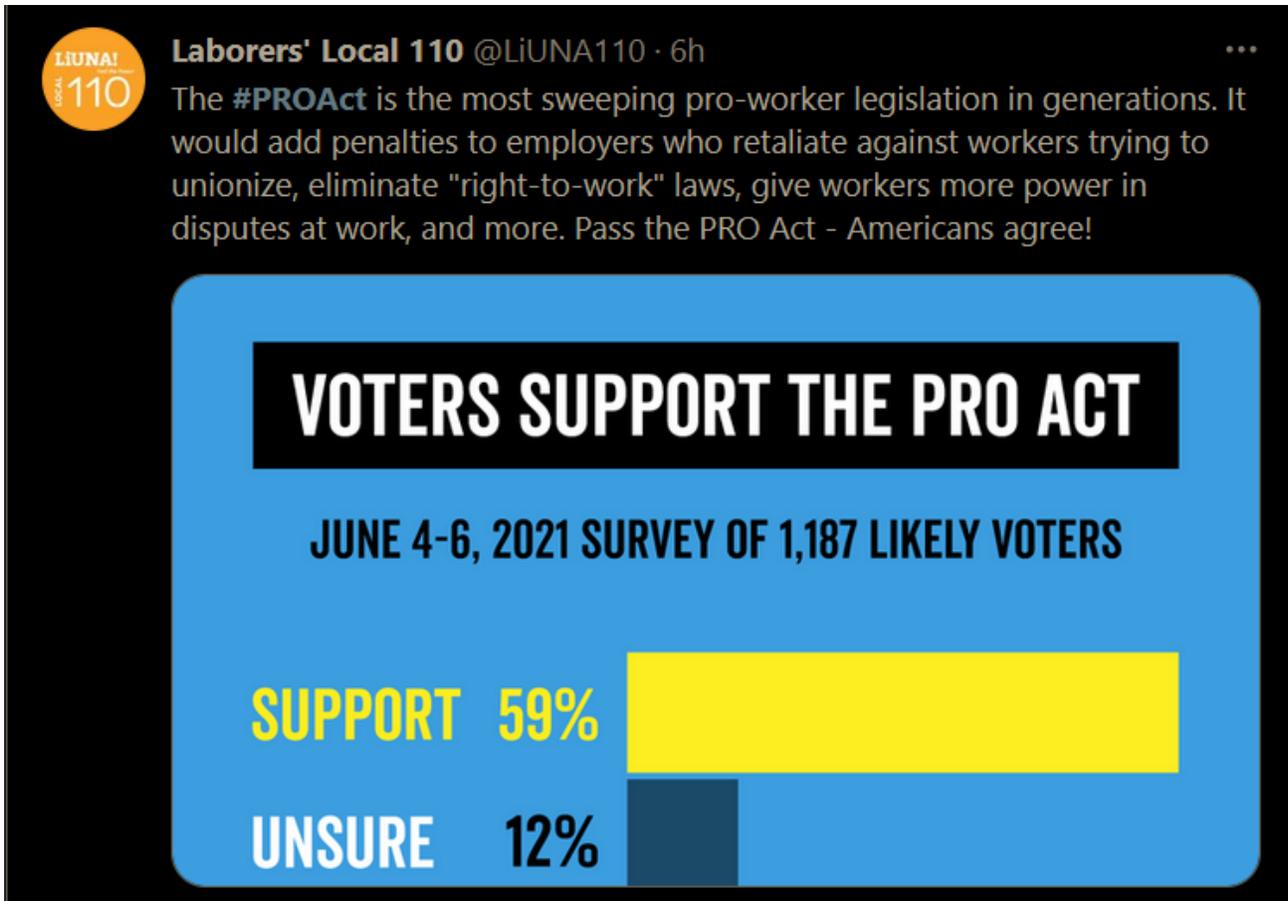
However, I recently found myself wanting to publicly oppose what I and many other freelancers feel is a very poorly written piece of legislation before the U.S. Congress.



S.420/ H.R.842, the Protecting the Right to Organize Act of 2021 (PRO Act), could force me and all kinds of freelancers — writers, “gig” workers for companies like Uber and Lyft, construction workers, truck drivers and countless more occupations now considered independent contractors — to become full-time workers. In my

case, that's something I've written about on this blog as a goal. But I may be in the minority, given the amount of freelancer social media posts against the PRO Act.

It passed the House in March by a 225-206 vote, with Democrats in favor and Republicans opposed. So far, 44 Democratic and two independent Senators have cosponsored it. The bill was referred to the Senate Health, Education, Labor and Pensions committee but no hearings were scheduled. It would require universal Democratic support and 10 Republican crossover votes to pass in case of a GOP filibuster, so supporters have proposed the bill be added to the Biden administration's infrastructure bill.



AB-5 & the ABC Test basis for the act

The PRO Act is based largely on a controversial California measure, AB-5, passed by that state's legislature in 2019. It included what is known as the "ABC Test." The test, as well as the entire PRO Act, would amend the National Labor Relations Act, which now excludes freelancers, or independent contractors, as defined employees. Freelancers, also called 1099 employees, makeup 34% of the domestic workforce, or 53 million workers, according to the Freelancers Union and Elance o-Desk. These workers cannot be unionized under current law.

AB-5 still faces legal opposition before the 9th U.S. Circuit Court of Appeals and possibly the California Supreme Court.

In an April 2021 paper by former Obama administration National Labor Relations Board members Philip A. Miscimarra and Harry I. Johnson III, entitled, “The PRO Act’s Changes to ‘Independent Contractor’ Status: Unraveling the U.S. Economy,” they write, “In effect, the PRO Act would eliminate independent contractor status, regardless of how the contractor and the employer define the relationship, where the work is either (a) part of a company’s ‘usual’ business, (b) subject to the employer’s ‘control and direction,’ or (c) not associated with an independent ‘trade, occupation, profession or business.’”

Further, Miscimarra and Johnson noted, “The PRO Act’s adoption is likely to mean that many businesses and service providers who currently maintain a lawful contractor relationship will violate federal law merely by continuing the arrangement, which may result in substantial litigation and potential liabilities, even though none of the participants wanted the relationship to change and nobody may understand that the arrangement is unlawful.”

Thousands of small businesses could face financial harm due to employment requirements such as overtime and benefits they would have to pay the freelancers they now work with if the bill becomes law.



Opposition forms, supporters point to other benefits

Opponents have held webinars, Facebook groups and websites have sprung up to rally and organize opposition through things like writing to members of Congress, opinion columns and letters to the editor. Rallies against the bill have also been held across the nation.

Supporters such as the Communication Workers of America/AFL-CIO note on one of their websites that the PRO Act will:

- Protect strikes and other protest activities. The bill will make it illegal for employers to permanently replace striking workers and make secondary strikes and boycotts legal.
- Make it easier to bargain. The bill will eliminate obstacles for workers to get their first union contract.
- Help strengthen protections for workers forming a union. The bill will establish compensatory damages for

workers and penalties against employers when they fire or retaliate against workers for forming a union.

- Prevent the misclassification of workers as independent contractors.
- Deal a blow to “right-to-work” laws.

The wording “misclassification of workers as independent contractors” is another thing that riles up opponents. Many of them post on social media that they choose to be freelancers and do not want to be full-time W-2 workers. I can understand that; it’s their choice and they shouldn’t be forced to give up that choice.

I like some of these points but it comes down to personal choice. It should be up to each individual to decide if they want to work full-time, join unions and/or pay their dues.



Protect personal choice

This bill just goes too far, even if the ABC test is removed and replaced with an acceptable substitute. I’m highly disappointed President Biden, who has called himself “a union man,” and Congressional Democrats have pushed the PRO Act. Of course, you can trace campaign finance money to see why Biden and his party want to get the bill approved.

I choose to be a freelancer right now, even though I’d rather be a full-time employee of one employer. As long as I can continue to work at home.

That’s my choice and personal choice is what the PRO Act, as currently written, could deny millions of America’s workers.

Editor’s note: This post was edited to clarify that 44 Democratic and two independent Senators have cosponsored the PRO Act instead of three or four of all Senators.

