Revenue Estimates of PRO Act Penalties

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October 27, 2021

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Executive Summary

Some Senators and Members of Congress are considering adding a provision to the reconciliation bill to levy civil penalties on employers for unfair labor practices. Under the new provision, employers could be fined $50,000 to $100,000 for each unfair labor practice. The Congressional Budget Office (CBO) estimated in December 2019 that such a provision would increase revenues to the Federal government by $39 million over 10 years.

When CBO performed the revenue estimate, its analysts explicitly wrote that "it cannot anticipate the number of businesses likely to be affected by the bill or the extent of changes in their labor practices resulting from it; therefore, CBO cannot estimate the cost to comply with many of those requirements." This paper estimates a range of costs that would be incurred in complying with the mandate.

The paper concludes that

- Imposing new civil penalties of $50,000 to $100,000 would not gain $39 million over 10 years, but would lose revenue.
- This is because some employers would move offshore, and others would become less productive and/or hire fewer workers, resulting in a loss of Federal, State, and Social Security tax revenue from the erosion of the tax base and from lower corporate profits and income levels.
- The average small business franchise owner, whose average profit is $433,000, would lose up to $142,000 (33 percent of profits) if the employees of a franchisee were required to be employed by a unionized franchisor, potentially affecting 233,000 small business franchise owners across the country.
- Corporate tax losses for franchised businesses would range from $360 million to $2.1 billion annually.
- Federal, State, and Social Security losses in tax revenue for franchised businesses would range from $2 billion to $6 billion.
- For a company with $500,000 profits before unionization, the net present value of reduced Federal corporate taxes would be $51,450. For a company with $100 million in profits before unionization, the net present value of reduced Federal corporate taxes would be $10.2 million.

- A company with a $500,000 wage bill before unionization would have a net present value of reduced Federal and State taxes and Social Security payments of $73,500 as a result of penalties that lead to unionization. A company with a $100 million wage bill would have a net present value of reduced taxes and Social Security payments of $14.7 million.
- This reduced economic activity and commensurate decline in tax revenues would surpass the $39 million CBO estimate over 10 years of revenue generated from increased civil penalties for ULPs.
- The provision would disproportionately disadvantage small businesses, who would make more unintentional errors because they do not have the human resources departments or the legal expertise of larger corporations.

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Introduction

The Protecting the Right to Organize Act (PRO Act) passed the House of Representatives earlier this year and is now awaiting a vote in the Senate.[2] Some Senators and Members of Congress are discussing including employer penalty provisions of the PRO Act into the reconciliation bill. The Congressional Budget Office (CBO) published a revenue estimate of these penalty provisions in December 2019. CBO concluded that the employer penalties would result in an additional $39 million in revenues over the 10-year period 2020-2029, with an average annual amount of $3.9 million per year, ranging from $2 million per year in 2021 to $5 million a year in 2029.[3] The CBO estimates only accounted for revenues from penalties and did not account for other factors such as lower tax revenues from reduced economic activity in the United States.

This paper concludes that CBO's revenue estimates should be offset by reduced corporate and individual tax revenue from lower economic activity due to the employer penalty provisions of the PRO Act. When accounting for the revenue effects of reduced firm profits and reduced wages due to the substitution of capital for labor and greater offshoring, the provision would lose substantially more revenues than it could gain.

Description of the Protecting the Right to Organize Act

The PRO Act has a number of provisions that would amend the National Labor Relations Act to expand the power of labor organizations seeking to organize workplaces. For instance, the PRO Act would impose mandatory binding arbitration on contracts between workers and employers; reduce workers' rights to a secret ballot in elections for union representation; change the legal definitions of "employee," "supervisor," and "employer;" broaden the rights to strike; shield unions from liability for secondary strikes; require all employees covered by contracts to

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[1] This work was partially underwritten by a grant from the Workforce Fairness Institute. All opinions and errors are the author's own.
[2] H.R. 842, Protecting the Right to Organize Act of 2021, Congress.gov, https://www.congress.gov/bill/117th-congress/house-bill/842, accessed October 25, 2021.
[3] Congressional Budget Office, Cost Estimate of H.R. 2474, Protecting the Right to Organize Act of 2019, December 5, 2019, https://www.cbo.gov/system/files/2019-12/hr2474_0.pdf, accessed on October 25, 2021.

pay union dues; broaden the definition of unfair labor practices; and increase penalties for unfair labor practices.

Most of the provisions in the PRO Act cannot be incorporated into the reconciliation bill because they do not deal with revenues. However, the provision to levy civil penalties for unfair labor practices has revenue effects that have been estimated by CBO, and so could be included.

Section 12 of the PRO Act would impose new civil penalties of $50,000 to $100,000 per unfair labor practice. There are numerous unfair labor practices, many technical in nature. Unfair labor practices include putting the wrong material in an employee handbook; discussing the possibility of union organizing at a staff meeting; and correcting an employee's language in the workplace.

These penalties could be levied on a company, or on the directors or officers of a company. Such civil penalties could put small companies out of business or discourage them from challenging union organizing. The existence of these potential penalties could also discourage individuals from joining companies as directors or officers, reducing the talent available.

The penalties would disproportionately disadvantage small businesses, who make more unintentional errors because they do not have human resources or legal expertise of larger corporations.

Several tax provisions in the reconciliation bill favor unions such as a deduction for union dues of up to $250 a year and a tax credit of $4,500 for purchasing cars made with union labor, such as cars by Ford, GM, and Stellantis. These tax provisions would be scored as losing revenue. CBO has not produced a score of these provisions.

Revenue Effects of Civil Penalties

When faced with civil penalties of $50,000 or $100,000 for each unfair labor practice, in addition to compensation, companies will not continue business as usual.

Because the PRO Act provisions would raise the cost of doing business in the United States, businesses that have a locational choice would look elsewhere. Some manufacturing and service companies would move offshore, lowering the Federal, State, and local tax base. Businesses that cannot easily relocate would face competition from—and lose market share to—lower-cost rivals in international jurisdictions without Pro Act provisions. The United States has already seen the globalization of production, as companies that can gain by moving offshore have done so. Asia, in particular China, has been the beneficiary. Rather than being remote, the possibility of companies moving offshore is very real.

Companies that remain in the United States would become less productive, generating less taxable revenue. Dr. Ronald Bird, Senior Regulatory Economist with the U.S. Chamber of

Commerce, has estimated that the average franchisee would experience an annual revenue loss of $142,000 and $21,000 in lost profit per year if the employees of the franchisee were required to be employed by a unionized franchisor.[4] These amounts have a significant effect on the 233,000 small franchise businesses in which average annual revenue is only $2.9 million and average profit including return on the entrepreneur's own labor is $433,000. Total revenue losses would be from $17 billion to $33 billion per year for franchised business alone. In Table 1, I present the annual corporate tax revenue loss assuming annual corporate tax rates of 21 percent or, alternatively, an individual tax rate of 35 percent for franchisees that are not corporations.

Table 1 is based on Dr. Bird's estimates of losses for franchisees. Column 1 shows annual GDP losses in franchise revenue ranging from a minimum of $17 billion to an average of $33 billion. Column 2 shows a range of assumed corporate profit shares for franchisees from 10 percent to 30 percent. Column 3 shows the expected annual corporate tax losses at a 21 percent rate. These range from $360 million with a 10 percent profit share on $17.2 billion in lost revenue to $2.1 billion with a 30 percent profit share on $33.3 billion in lost revenue. These values are substantially larger than the maximum $5 million annual revenue from penalties.

Table 2 is similar to Table 1, but examines losses from Federal and State income taxes and Social Security taxes. Column 1 shows annual GDP losses in franchise revenue ranging from a minimum of $17 billion to an average of $33 billion. Column 2 shows the assumed range of payroll share for franchise losses, ranging from 40 percent to 60 percent. Column 3 shows the expected annual Federal and State individual tax losses and Social Security losses. These range from $2 billion in losses with an assumed 40 percent payroll share on a minimum of $17 billion in revenue losses, to $6 billion in losses with a 60 percent payroll share on an expected franchise revenue loss of $33 billion. These values are substantially larger than the maximum $5 million annual revenue from penalties.

Tables 1 and 2 examine the effects of the proposed penalties on franchisees nationwide. Below I examine the effects of the proposed penalties on companies in any business. I present the effect of proposed penalties on individual businesses based on the Dr. Bird's estimates of a 4.9 percent reduction in firm revenue associated with unionization.

Table 3 shows the effect of unionization on Federal corporate tax revenue for companies with different levels of profits. The first column shows a range of firm profits before unionization. The second column shows the reduction in firm profits due to unionization. The third column

[4] See Ronald Bird., Ph.D., "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer," in *Comments on Behalf of the United States Chamber of Commerce to the National Labor Relations Board Proposed Rulemaking*, pages 35-55, https://www.uschamber.com/assets/archived/images/uscc_comments_to_nlrb_on_joint_employer_rulemaking.pdf, accessed October 25, 2021.

shows reduced Federal tax revenue due to reduced profits. The fourth column shows the net present value of reduced firm tax liability at a 10 percent discount rate.

For a company with $500,000 profits before unionization, the net present value of reduced Federal corporate taxes as a result of unionization is $51,450. Based on a company faced with a single unfair labor practice penalty, the Federal government would lose more than the $50,000 penalty. The Federal government would lose even more corporate tax revenue for companies with larger corporate profits that were unionized. There are many companies that fit in each row of Table 3. Not every company will be unionized, but whenever a company is unionized the penalties will have a negative effect on Federal corporate tax revenue.

Table 3 only addresses reduced Federal corporate tax revenue as a result of penalties. There are corresponding losses in State corporate tax revenues. Moreover, there are losses in Federal personal income tax revenue, State income tax revenue, and Social Security revenue, as illustrated in Table 4.

The first column of Table 4 presents various ranges of the company's wage bill before unionization. The second column calculates the reduced company wage bill based on the 4.9 percent estimate from the Chamber of Commerce. The third column presents reduction in Federal and State income tax revenue as well as in Social Security payments based on a conservative estimate of 30 percent to cover all individual income taxes and Social Security payments (both firm and individual contribution). The fourth column presents the net present value of these individual tax and Social Security contributions.

As can be seen from Table 4, a company with a $500,000 wage bill before unionization will have a net present value of reduced taxes and Social Security payments of $73,500 as a result of penalties that lead to unionization. Companies with larger payrolls will have even greater reductions. For instance, a firm with a $100 million wage bill would have a net present value of reduced taxes and Social Security payments of $14.7 million. The net effect of a single penalty can lead to substantially reduced tax payments. I have not attempted to combine Tables 3 and 4, because different firms have different combinations of profits and payroll. However, the total effect of the proposed penalties is a combination of revenue losses from Tables 3 and 4.

Conclusion

In its revenue estimate, CBO states that "it cannot anticipate the number of businesses likely to be affected by the bill or the extent of changes in their labor practices resulting from it; therefore, CBO cannot estimate the cost to comply with many of those requirements."[5] This paper has provided an estimate of the costs of changes in employer behavior. By offering a range of estimates, I show that the cost of imposing civil penalties on firms would exceed $39

[5] Congressional Budget Office, op. cit., page 6.

million and therefore increase the deficit. Some companies would either go out of business or move offshore due to the decline in profits. This would lower employment and GDP.

Table 1

Range of Federal Corporate Tax Revenue Losses
From Penalties on Franchisee Employers for Unfair Labor Act Violations
in the PRO Act Provisions of the Reconciliation Bill
Based on Estimates From Dr. Ronald Bird

	Annual GDP Losses In Franchisee Revenue (Billions of Dollars)	Assumed Corporate Profit Share For Franchisee Losses	Expected Annual Federal Corporate Tax Losses at 21% rate (Billions of Dollars)
Minimum	$17.20	10%	$0.36
Expected	$33.30	10%	$0.70
Minimum	$17.20	20%	$0.72
Expected	$33.30	20%	$1.40
Minimum	$17.20	30%	$1.08
Expected	$33.30	30%	$2.10

Source: Ronald Bird., Ph.D., "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer," in Comments on Behalf of the United States Chamber of Commerce to the National Labor Relations Board Proposed Rulemaking, pages 35-55,
https://www.uschamber.com/assets/archived/images/uscc_comments_to_nlrb_on_joint_employer_rulemaking.pdf, accessed October 25, 2021, and author assumptions and calculations.

Table 2

Range of Federal and State Personal Income Tax Revenues Losses
and Social Security Losses
From Penalties on Franchisee Employers for Unfair Labor Act Violations
in the Pro Act Provisions of the Reconciliation Bill
Based on Estimates from the Chamber of Commerce

	Annual GDP Losses in Franchisee Revenue (Billions of Dollars)	Assumed Payroll Share For Franchise Losses	Expected Annual Federal and State Individual Tax Losses and Social Security Losses at 30% (Billions of Dollars)
Minimum	$17.20	40%	$2.06
Expected	$33.30	40%	$4.00
Minimum	$17.20	50%	$2.58
Expected	$33.30	50%	$5.00
Minimum	$17.20	60%	$3.10
Expected	$33.30	60%	$5.99

Source: Ronald Bird., Ph.D., "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer," in Comments on Behalf of the United States Chamber of Commerce to the National Labor Relations Board Proposed Rulemaking, pages 35-55, https://www.uschamber.com/assets/archived/images/uscc_comments_to_nlrb_on_joint_employer_rulemaking.pdf, accessed October 25, 2021, and author assumptions and calculations.

Table 3

Likely Effect of Unionization on Reduced Federal Corporate Tax Revenue
For Firms With Different Levels of Profits Before the PRO Act
Assuming 4.9% Reduction In Firm Revenue

Firm Profits Before Unionization	Reduced Firm Profits	Reduced Firm Tax Liability at 21%	NPV of Reduced Firm Tax Liability at 10% Discount Rate
$ 500,000.00	$ 24,500.00	$ 5,145.00	$ 51,450.00
$ 1,000,000.00	$ 49,000.00	$ 10,290.00	$ 102,900.00
$ 5,000,000.00	$ 245,000.00	$ 51,450.00	$ 514,500.00
$ 10,000,000.00	$ 490,000.00	$ 102,900.00	$ 1,029,000.00
$ 50,000,000.00	$ 2,450,000.00	$ 514,500.00	$ 5,145,000.00
$ 100,000,000.00	$ 4,900,000.00	$ 1,029,000.00	$ 10,290,000.00
$ 500,000,000.00	$ 24,500,000.00	$ 5,145,000.00	$ 51,450,000.00
$ 1,000,000,000.00	$ 49,000,000.00	$ 10,290,000.00	$ 102,900,000.00

Source: Ronald Bird., Ph.D., "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer," in Comments on Behalf of the United States Chamber of Commerce to the National Labor Relations Board Proposed Rulemaking, pages 35-55, https://www.uschamber.com/assets/archived/images/uscc_comments_to_nlrb_on_joint_employer_rulemaking.pdf, accessed October 25, 2021, and author assumptions and calculations.

Table 4

Likely Effect of Unionization On Reduced Federal and State Individual Income Tax Revenue As Well As Reduced Social Security Revenue For Firms With Different Levels of Wage Compensation Before the PRO Act Assuming 4.9 Percent Reduction In Employee Wages

Firm Wage Bill Before Unionization	Reduced Firm Wage Bill	Reduction in Individual Income Tax Payments (Federal and State) As Well As Social Security Payments, Estimated At 30%	Net Present Value of Reduced Taxes and Social Security at 10% Discount Rate
$ 500,000.00	$ 24,500.00	$ 7,350.00	$ 73,500.00
$ 1,000,000.00	$ 49,000.00	$ 14,700.00	$ 147,000.00
$ 5,000,000.00	$ 245,000.00	$ 73,500.00	$ 735,000.00
$ 10,000,000.00	$ 490,000.00	$ 147,000.00	$ 1,470,000.00
$ 50,000,000.00	$ 2,450,000.00	$ 735,000.00	$ 7,350,000.00
$ 100,000,000.00	$ 4,900,000.00	$ 1,470,000.00	$ 14,700,000.00
$ 500,000,000.00	$ 24,500,000.00	$ 7,350,000.00	$ 73,500,000.00
$ 1,000,000,000.00	$ 49,000,000.00	$ 14,700,000.00	$ 147,000,000.00

Source: Ronald Bird., Ph.D., "Statement Regarding the Economic Impact of the Prospective NLRB Public Policy Decision Regarding the Definition of Joint Employer," in Comments on Behalf of the United States Chamber of Commerce to the National Labor Relations Board Proposed Rulemaking, pages 35-55, https://www.uschamber.com/assets/archived/images/uscc_comments_to_nlrb_on_joint_employer_rulemaking.pdf, accessed October 25, 2021, and author assumptions and calculations.