FLOOR ALERT

JOB KILLER

July 15, 2021

TO: Members, California State Senate

SUBJECT: **AB 616 (STONE) AGRICULTURAL LABOR RELATIONS: LABOR REPRESENTATIVE ELECTIONS: REPRESENATION BALLOT CARD ELECTION**
OPPOSE/JOB KILLER – AS AMENDED JUNE 17, 2021

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE AB 616 (Stone),** which has been labeled as a **JOB KILLER.** This bill seeks to eliminate an agricultural employee's democratic right to cast an independent vote in a secret ballot election regarding whether to unionize, making them susceptible to coercion and misinformation. The bill also creates an unfair retaliation presumption against employers and imposes an unrealistic bond requirement on employers pursuing their legal right to appeal an order by the Agricultural Labor Relations Board ("ALRB").

AB 616 Eliminates Workers' Voting Rights and Unfairly Tips the Balance in the Unions Favor:

The current provisions of the Agricultural Labor Relations Act ("ALRA") adequately protect the rights and interests of employees and employers, as well as unions. Modeled on the National Labor Relations Act, the ALRA affords agricultural employees the opportunity to select—or to refrain from selecting—a particular union as their collective bargaining representative through a formal and secure secret ballot election. Each employee votes in a private booth, without any pressure or coercion from the employer, union or co-employees. In this way, the employees' true and current preferences on unionization are reliably determined.

AB 616, however, seeks to strip employees of this fundamentally democratic right, instead allowing unions to bypass secret ballot elections under an alternative "ballot card" procedure. Under **AB 616,** a union would be installed as a bargaining unit's representative merely by submitting a petition to the ALRB along with representation cards signed by a majority of affected employees and designating that union for that purpose.

But unlike the current process, which guarantees that employees ultimately express their true sentiments about unionization in the tightly controlled setting of a supervised secret ballot election, this new procedure provides no safeguards to ensure the representation cards really indicate the employees' free, uncoerced

and current choice. For example, all ballots issued for an election are required to include a space for the employee to check “No Labor Organizations.” No such space or designation is required for a representation card. Additionally, **AB 616** expressly allows **the union** to complete the card for the employee. All the union or another employee has to do then is pressure the employee to sign it. Once signed, the card is valid for an entire year.

The secret ballot process has been long supported by the NLRB and others. *See, e.g., NLRB v. Flomatic Corp*., 347 F.2d 74, 78 (2d. Cir. 1965) (“[I]t is beyond dispute that secret election is a more accurate reflection of the employees’ true desires than a check of authorization cards collected at the behest of a union organizer.”) There are reports of the coercive and misleading conduct that occurs in election campaigns in decisions reported by the ALRB, NLRB, and courts. That conduct includes employees and union representatives pressuring employees to sign petitions or vote a certain way by telling them they will lose their job, have their tires slashed, or that they could be physically harmed. Other conduct includes the use of misinformation, such as distributing written materials purporting employee support for the union when in fact the employees quoted had never made such statements and did not authorize the use of their names on the flyer. Even putting that more serious conduct aside, it is also naturally more difficult to take a position contrary to the person standing before you, especially when that person is a co-worker or someone in a position of power like a union representative. A secret ballot provides the employee the ability to cast their vote without that same pressure and gives them the ability to keep their vote secretive if they so wish.

While the ALRB will be required to maintain the confidentially and secrecy of the cards, the union will be under no such restriction. Accordingly, the union and employees who support it will be able to easily identify, target and hassle those employees who have not given cards to the union. They will also have names and contact information provided to them by the employer to easily find employees. Noticeably, the bill includes consequences in Section 1156.35(i) if the employer is found to have engaged in inappropriate conduct, but there is **no** similar provision if a union is found to have engaged in inappropriate conduct. There is also no language in the bill making this ballot card process applicable to the decertification of a union, further demonstrating how one-sided this proposal truly is.

The ALRB and NLRB have special rules in place specifically to eliminate last minute pressure and electioneering, such as prohibiting union or employer representatives from being in the voting area on election day and prohibiting mass communications to groups of employees within 24 hours of an election. To allow a union representative to fill out the entire representation ballot card and simply have an employee sign it as an alternative to a ballot is far worse than talking to an employee in line to cast a secret ballot.

Similar Bills Have Been Vetoed:

Governor Brown recognized the dangers of this ballot card procedure and the impropriety of making such a drastic change to the ALRA without stakeholder involvement when he vetoed the nearly identical SB 104 (Steinberg) in 2011:

“To the Members of the California State Senate: In 1975, it was my privilege to sign into law our nation's first agricultural labor relations act, the "ALRA." This monumental achievement came only after a decade of intense conflict and violence in the fields. The movement created by the United Farm Workers provided the political basis for the legislative process that made the ALRA possible. In previous years, all attempts at passing a farm labor bill had failed, caught in the cross pressures generated by the profound differences that divided the Teamsters, the growers and the UFW. The final bill was not the product of one side but a hard fought compromise. It came after months of meetings and the participation of literally thousands of people. I personally spent hundreds of hours-often late into the night-listening and arguing with lawyers and representatives of all the sides. Thirty-six years later, the ALRA is still recognized as the best labor relations act in the country. Under its protections, tens of thousands of agricultural workers have voted for unionization or otherwise expressed their choice as to how their interests should be advanced. Yet, the disputes never quite stopped and today there are serious complaints that workers are deprived of their rights through a variety of unfair, improper and illegal acts. The proponents of SB 104 argue that the ALRA no longer works and must be drastically changed. SB 104 is indeed a drastic change and I appreciate the frustrations that have given rise to it. But, I am not yet convinced that the far reaching proposals of this bill--which alter in a significant way the guiding assumptions of the ALRA-are justified. Before restructuring California's carefully crafted agricultural labor law, it is only right that the legislature considers legal

provisions that more faithfully track its original framework. The process should include all those who are affected by the ALRA. I am deeply committed to the success of the ALRA and stand ready to engage in whatever discussions-public and private-that will accomplish the appropriate changes. As at the beginning, all parties must be heard and, before any product emerges, a wide array of opinions and experiences should be fairly considered. Besides being personally involved, I will direct my Labor and Agricultural Secretaries to reach out to all those who can help us achieve a fair and just result. I am returning Senate Bill 104 without my signature. Sincerely, Edmund G. Brown Jr."

AB 616's Rebuttable Presumption Is Effectively Unlimited in Time and Unnecessary Because Existing Law Already Protects Workers for the Covered Conduct:

AB 616 includes a presumption of retaliation where an employer disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against any worker during a labor organization's representation ballot card campaign. Employees are already protected from retaliation for participating in union activity under Labor Code Section 1153. The timing of the adverse action in relationship to the adverse action is already an important circumstantial consideration taken into account by the ALRB when evaluating a retaliation claim. This presumption is therefore unnecessary.

The presumption is also effectively unlimited as to time. A campaign could easily go on for weeks or months, indeed an employee's signature on a card is valid for an entire year. This provision would mean the employer cannot discipline any employee for **an entire year** without then being subject to this presumption. Further, the employer would have to overcome an impossible evidentiary standard to dispute a retaliation claim. The proposed Section 1156.35(j) provides that to overcome the presumption the employer must prove there was no retaliation by clear, convincing, and overwhelming evidence. The clear and convincing evidence standard is an extraordinarily high burden that is used only in very rare circumstances in employment law. There is absolutely no justification for imposing such a high standard here, especially where it could apply to any disciplinary action by an employer over an entire year. This would have a chilling effect on employers, making them hesitant to discipline even the most egregious conduct. It will also make it logistically impossible to have seasonal employees, which many agricultural employers have throughout the year. The employer would fear litigation and having to meet this impossible burden to end any of those seasonal employee's employment.

AB 616 Imposes Unreasonable Bond Requirements for Employers:

Employers may seek judiciary review of any ALRB order. **AB 616** impedes an employer's ability to exercise that legal right by requiring the employer to first post a bond in the amount of the entire economic value of the order before it can request review. The Legislature should not put such a steep price tag on an entity's legal right to appeal a legal decision, especially during a global pandemic where many depend on agricultural companies to keep food on the table and those businesses have suffered from devastating capital shortages to keep operations running. Further, the bill is again one-sided by making this bond burden only applicable to an employer and not to any union that seeks review of an ALRB order.

For these and other reasons, we respectfully **OPPOSE AB 616** as a **JOB KILLER.**

Sincerely,

Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
North Orange County Chamber

Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Tulare Chamber of Commerce

cc: Stuart Thompson, Office of the Governor
Alma Perez, Senate Committee on Labor, Public Employment & Retirement
Maria Morales, Office of Assembly Member Stone
Sean Porter, Office of Assembly Member Stone
Cory Botts, Senate Republican Caucus
Scott Seekatz, Senate Republican Caucus

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