March 26, 2025

Dear Members of Congress:

Senators Josh Hawley (R-MO), Cory Booker (D-NJ), Bernie Moreno (R-OH), Gary Peters (D-MI) and Jeff Merkley (D-OR) recently introduced S. 844, the "Faster Labor Contracts Act" (FLCA). The undersigned organizations, representing a wide variety of industries from across the country and economy, urge you to oppose this legislation, which could lead to the Federal Government mandating the terms of contracts between unions and companies. The bill runs directly counter to President Trump's recent pronouncement that "the days of rule by unelected bureaucrats are over,"[1] threatens economic viability of companies and jobs, forces contract terms without the consent of employees or companies, and is tantamount to an unconstitutional taking.

The FLCA is nearly identical to a provision in Senator Bernie Sanders's PRO Act and similar to a provision in the Employee Free Choice Act (EFCA), both of which Congress has repeatedly rejected on a bipartisan basis. The bill would require employers and unions to finalize initial collective bargaining agreements within 120 days or face "binding interest arbitration of first contracts." In practice, this means that an arbitration panel would be authorized by the federal government to dictate exactly what is included in the first contract, including wages, benefits, safety procedures, leave questions, and nearly every other aspect of workplace policy for newly organized employees. The arbitrators' ruling would "be binding upon the parties for a period of two years."

Parties would have no recourse against the government or arbitrators if the mandated contract terms result in company bankruptcy or closure, and neither the federal government nor arbitrators are equipped to set terms for private parties to a contract. As former Federal Mediation and Conciliation Service Director Peter Hurtgen explained to Congress when testifying on EFCA, "No outside agency, whether arbitration, courts, or government entity has the skill, knowledge, or expertise to create a collective bargaining agreement. If it is not a creature of the parties' creation it likely will fail of its purpose. It must be done with tradeoffs and separate prioritizing. Only the parties can do that. There are no standards for arbitrators to apply. There is no skill set for arbitrators to use. Solomon is simply unavailable."[2]

The bill also creates constitutional concerns. Mandatory arbitration would deprive both employers and employees of property rights without the requisite due process safeguards. The government would be granted the authority to impose a binding first contract unbounded by Fifth Amendment protections or any other statutory guidelines. As such, the FLCA runs "smack into the takings clause."[3] The mandated contract could force an employer already working on thin profit margins to spend thousands of dollars to overhaul their facilities, change subcontractors, or alter promotion policies, without any judicial oversight. Similarly, the imposed contract could cut the wages of employees without any consideration of legal fairness.

By eviscerating any "voluntary agreement," the FLCA also runs counter to a fundamental tenet of U.S. labor law. Under this longstanding bedrock principle, the parties, not the government, should determine the applicable terms and conditions of employment. The original authors of the

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[1] President Trump, Speech to a Joint Session of Congress, March 4, 2025.

[2] "Employee Free Choice Act: Restoring Economic Opportunity for Working Families." Senate Committee on Health, Education, Labor & Pensions, Public Hearing, March 27, 2007.

[3] Epstein, Richard. "The Employee Free Choice Act Is Unconstitutional." *Hoover Institution*, Dec. 19, 2008.

National Labor Relations Act (NLRA) acknowledged this important notion.[4] As the Supreme Court explained, "The object of [the NLRA] was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions. The basic theme of the Act was that, through collective bargaining, the passions, arguments, and struggles of prior years would be channeled into constructive, open discussions leading, it was hoped, to mutual agreement. But it was recognized from the beginning that agreement might, in some cases, be impossible, and it was ***never*** intended that the Government would, in such cases, step in, become a party to the negotiations, and impose its own views of a desirable settlement."[5] Multiple federal courts have confirmed this over time, finding that a "fundamental premise" of the NLRA is to ensure "private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract."[6] The Faster Labor Contracts Act would obliterate this principle and allow the government-mandated arbitrators to force their own views on the parties.

Under the bill, workers would effectively be shut out of the negotiation process and forfeit their right to vote for or against the contract. As University of Chicago Professor Richard Epstein explained in 2009, workers should be "free to walk away from any deal they don't like."[7] The FLCA would prioritize speed over safeguarding workers' critical right to have a voice in the workplace.

The FLCA would require a large expansion of the federal government at a time when the Trump administration is reducing the scope and size of federal agencies. Proponents must clarify who will be accountable for hiring and training the thousands of new federal government employees required to oversee this significant new initiative, as well as how taxpayers would finance the implementation of this proposal.

Finally, the sponsors of the bill have not made the case for the FLCA or explored in any depth whether existing law is inadequate and, if so, what reforms short of an unconstitutional takeover of private contracts might address these possible inadequacies. The NLRA already contains requirements that parties bargain in good faith toward a contract.[8] Any failure by parties to abide by these obligations may result in the National Labor Relations Board assessing penalties. As part of this obligation to bargain, employers must meet with the union at reasonable times and intervals and negotiate in good faith on mandatory subjects. Neither party can engage in bad-faith, surface, or piecemeal bargaining nor refuse to provide relevant information. The law also imposes many other restrictions on employers during bargaining, including limits on employers directly communicating with employees and changing wages, hours, working conditions, or other mandatory bargaining subjects without negotiating with the union.

In summary, this bill is bad for American workers, employers, and the overall economy. We strongly urge you to oppose the legislation.

Sincerely,

Coalition for a Democratic Workplace

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[4] See Remarks of Senator David I. Walsh, 79 Cong. Rec. 7659; see also 79 Cong. Rec. 9682, 9711.
[5] *H. K. Porter Co., Inc. V. NLRB*, 397 U.S. 99 (1970), emphasis added.
[6] *U.S. Can Co. v. NLRB*, 984 F.2d 864, 870 (7th Cir. 1993).
[7] Epstein, Richard. "The Case Against the Employee Free Choice Act." University of Chicago Law School, 2009.
[8] National Labor Relations Act, 29 U.S.C. §§ 151-169.

60 Plus Association
AICC, The Independent Packaging Association
Alliance for Chemical Distribution
American Bakers Association
American Hotel and Lodging Association
American Pipeline Contractors Association
American Trucking Associations
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Construction Industry Round Table
Consumer Technology Association
Convenience Distribution Association
Foodservice Equipment Distributors Association
Global Cold Chain Alliance
Heating, Air-conditioning, & Refrigeration Distributors International
HR Policy Association
Independent Bakers Association
Independent Electrical Contractors
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
Missouri Chamber of Commerce
Missouri Retailers Association
National Association of Wholesaler-Distributors
National Council of Chain Restaurants
National Fastener Distributors Association
National Federation of Independent Business
National Marine Distributors Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
Ohio Chamber of Commerce
Outdoor Power Equipment and Engine Service Association
Pennsylvania Utility Contractors Association
Plastics Pipe Institute
Power & Communication Contractors Association
Small Business & Entrepreneurship Council
Tile Roofing Industry Alliance
U.S. Chamber of Commerce
Western Electrical Contractors Association