HRPA HR POLICY ASSOCIATION®

March 6, 2025

Bill Cassidy
U.S. Senator
Chair
Senate Committee on Health,
Education, Labor & Pensions
455 Dirksen Senate Office Building
Washington, DC 20510

John Thune
U.S. Senator
Senate Majority Leader
U.S. Senate SD-511
Washington, DC 20510

RE: HR Policy Association Opposition to the Faster Labor Contracts Act

Dear Chair Cassidy and Majority Leader Thune:

HR Policy Association ("HRPA") writes to urge your opposition to the Faster Labor Contracts Act ("FLCA") recently introduced by Sens. Josh Hawley (R-MO), Cory Booker (D-NJ), Gary Peters (D-MI), Bernie Moreno (R-OH), and Jeff Merkley (D-OR). HRPA strongly supports efforts to modernize federal labor law and promote productive and harmonious labor relations. However, the FLCA presents significant practical issues for workers, unions, and employers alike. Government arbitrators, no matter how well-intentioned, simply cannot match the level of understanding that employers, their workers, and their workers' union representatives have of their respective workplaces and their respective needs. Forcing arbitration could lead to contracts that do not work for anyone and, worse, could threaten the very businesses that workers depend on for their livelihoods. The legislation also presents major legal concerns, as outlined below. Accordingly, HRPA strongly urges you to oppose this legislation.

HR Policy Association is a public policy advocacy organization that represents the chief human resource officers of more than 350 of the largest corporations doing business in the United States and globally. Collectively, their companies employ more than 10 million employees in the United States, nearly nine percent of the private sector workforce. Since its founding, one of HRPA's principal missions has been to ensure that laws and policies affecting human resources are sound, practical, and responsive to labor and employment issues arising in the workplace.

As proposed, the FLCA would require employers and unions to begin negotiating their first collective bargaining agreement within 10 days of the union's certification. If no agreement is reached within 90 days, the bill would require parties to submit to mediation. If mediation does not produce an agreement within 30 days, the parties would be required to submit to government-imposed binding arbitration. In essence, the bill would allow the federal government to impose contractual terms on parties if they are unable to reach an agreement within 120 days. Such terms would be binding for up to two years.

To the extent that current legal frameworks do not adequately facilitate or incentivize faster initial collective bargaining agreements, the draconian measures that the FLCA would impose do not provide a measured or practical solution.

The FLCA presents several major practical concerns for employers, workers, and their unions:

- These three parties inherently have the best understanding of what is most effective for their respective workplaces.
- The collective bargaining process, while at times contentious, is informed by this understanding and is meant to produce compromises which benefit all stakeholders.
- There is simply no reality in which government arbitrators have a better understanding of what is best for a specific workplace. Requiring forced arbitration could result in contracts that do not work effectively for any party, let alone jeopardize the viability of the business on which the workers rely for their livelihood.
- It is unrealistic to expect parties to begin bargaining within 10 days. The establishment of bargaining committees, the resolution of bargaining guidelines, the drafting of contract proposals, and many other logistical issues take up to 90 days if not longer. For first contract negotiations, these timelines can be even longer as parties are just beginning a formal bargaining relationship.
- Further, as detailed below, employers and unions may disagree with the decision of the NLRB with respect to the bargaining unit composition and may appeal such decision in federal court. Bargaining therefore should not, and cannot, occur within 10 days in such situations.
- It is similarly unrealistic to expect bargaining for an initial contract to be completed with 120 days. Initial bargaining can be quite complex, as essentially all terms and conditions of employment have to be negotiated between the parties and reduced to a formal written agreement. Indeed, the provisions of initial labor contracts are exceptionally important as many of the initial terms remain in place for decades in successor agreements.
- Bargaining for initial agreements can also be interrupted by lengthy information requests by either party, and/or strikes and lockouts and other economic self-help options that are available to employers and unions.
- The Federal Mediation Conciliation Service (FMCS) does not have the budget or staff to conduct the mandatory mediation and arbitration provided for by this legislation.

The FLCA also presents several significant legal issues, including running afoul of both the Constitution and the text and purpose of the NLRA:

- Allowing the government to impose contractual terms on private parties could – and would – amount to impermissible takings devoid of due process protections, in clear violation of the Fifth Amendment of the U.S. Constitution.
- Government arbitrators could also impose contractual terms that could run afoul of First Amendment speech rights, such as requiring employers to provide employer property access to union representatives.
- Under current federal labor law, employers are permitted to impose terms and conditions provided they have already bargained to impasse with the union. Because the FLCA would permit government arbitrators to impose contractual terms after 120 days of bargaining and reaching such an impasse, this legal doctrine – and the rights it affords employers – would be eviscerated.

- One of the foundational principles of the NLRA is the right for both parties to voluntarily negotiate (provided both parties make good faith negotiating efforts) collective bargaining agreements, a principle that has been further established by the Supreme Court.[1] Indeed, this right of parties to collectively bargain is at the core of the NLRA, and such right has been recognized by both Democrat and Republican-led Boards for decades. The FLCA directly contravenes this principle by allowing the government to dictate contractual terms.
- Under current federal labor law, employers have the well-established right to challenge certification of a union election victory solely through a refusal to bargain (known as a "technical 8(a)(5) violation") that through the Board's appellate process results in the challenge being heard in federal court. The FLCA's bargaining requirements (and eventual mandatory arbitration requirements) would foreclose this judicial appeal option as provided for in the NLRA.

HRPA supports efforts to create new legal frameworks for labor relations that better reflect current workplace realities than the current, significantly outdated approach which is based on antiquated and adversarial industrial relations. Such efforts should be informed by input from all stakeholders that best promotes harmonious and productive labor relations. The FLCA would not achieve these goals, was developed without balanced stakeholder input, and presents serious legal and practical implications. For these reasons, we strongly urge Senators to oppose its passage.

We welcome the opportunity to work with you and your colleagues in the Senate to develop a new proposal that better meets the goals outlined above.

Sincerely,

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Director of Labor &
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HR Policy Association

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Senior Labor &
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HR Policy Association

Chatrane Birbal
Vice President, Public Policy
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CC: U.S. Senate

[1] *See, e.g. H.K. Porter Co., Inc. v. NLRB*, 397 U.S. 99 (1970).