COALITION FOR A
DEMOCRATIC WORKPLACE

THE ARBITRATION TRAP

Why the Faster Labor Contracts Act Is Bad for Workers, Employers, and the American Economy

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EXECUTIVE SUMMARY

The Faster Labor Contracts Act (FLCA) (S. 844 / H.R. 5408, 119th Congress) presents itself as a common-sense reform to speed up the collective bargaining process for newly organized workers. It is nothing of the kind. Beneath its bipartisan branding, the FLCA would impose mandatory timelines on first-contract negotiations, funnel unresolved disputes into federal mediation, and — when mediation fails — hand a government-appointed arbitration panel the power to dictate the terms of a private employment contract for two years. Workers would have no vote on the result. Employers would have no meaningful appeal. And the federal agency tasked with administering the system, the Federal Mediation and Conciliation Service (FMCS), is simultaneously being downsized toward irrelevance.

This paper makes two broad arguments. First, the FLCA's arbitration mechanism produces perverse economic incentives, rewards bad-faith bargaining, and — as decades of evidence from Rust Belt manufacturing to the recent bankruptcies of household-name employers demonstrate — generates the kind of unchecked labor power and unbalanced contracts that can destroy jobs and shutter facilities rather than improve workers' lives. Second, the bill's noneconomic consequences are equally troubling: it strips workers of the democratic right to ratify or reject their own contracts, violates the foundational principle of freedom of contract, infringes on workers and employers' Constitutional rights, and — through its "comparator wages" arbitration standard — creates a mechanism by which the political demands of organized labor's most aggressive locals can be inserted into binding employment agreements without a single worker vote or employer consent.

I. INTRODUCTION

On March 4, 2025, Senators Josh Hawley (R-MO) and Bernie Moreno (R-OH), joined by several Democrats, introduced the Faster Labor Contracts Act (FLCA). The FLCA would amend the National Labor Relations Act (NLRA) to impose a 120-day time limit for unions and employers to agree on first contracts after workers have chosen union representation. If the parties fail to come to agreement within the 120-day limit, either party may then request that the contract be settled by an arbitration panel of three arbitrators. The panel will impose a two-year contract on the parties. Neither party may appeal the arbitration decision. A companion bill, H.R. 5408, was introduced in the House on September 16, 2025, and is pending a floor vote after Rep. Donald Norcross (D-NJ-1) filed a discharge petition to force the bill out of committee.

The frustration over the bargaining process is understandable. Coming to terms on an initial contract is very hard and can be time-consuming. Unions feel a need to prove their worth by obtaining terms that are more favorable than the employer would have offered otherwise, and companies must make sure that any contract terms are sustainable.

The FLCA's proposed remedy for this frustration, however, is far worse than any disease it purports to treat. By replacing voluntary collective bargaining with government-managed arbitration, the bill removes the union's incentive to be reasonable. In voluntary bargaining, unions are driven to obtain a timely agreement for their members, which provides incentives for the union to bargain in good faith and take reasonable positions. Arbitration removes this incentive. Under the FLCA, the union's positions are no longer designed to achieve timely voluntary agreements; instead, the union will solely focus on positioning itself for the best possible outcome in arbitration — in other words, the FLCA incentivizes unions to make unreasonable demands. It also strips workers of their democratic voice, exposes employers to economically unsustainable outcomes, and opens a back door through which the ideological agenda of organized labor's most powerful locals can be nationalized without consent. It results in unchecked union bargaining power that upends the collective bargaining process.

This paper proceeds in two parts. Part One examines the economic consequences of the FLCA: the perverse incentives created by the arbitration trigger; the documented record of what happens when excessive union bargaining power is exercised without the market check that voluntary bargaining provides; a concrete hypothetical — the recently concluded VW Chattanooga negotiations — illustrating the damage a government arbitrator would likely have inflicted on a single employer; the bill's potential harm to young and future workers; the potential forced enrollment of workers into underfunded multiemployer pension plans; the shortcomings of the bills's institutional infrastructure; the cautionary tale of the No Surprises Act; and the costs the bill imposes on the American taxpayer.

Part Two examines the noneconomic consequences: the elimination of worker ratification rights, the threat the bill poses specifically to small and mid-sized employers, the bill's infringement on the principle of freedom of contract, its Constitutional vulnerabilities, and the mechanism by which the FLCA converts politically motivated bargaining demands into binding, government-imposed contract terms.

II. HOW THE FLCA WORKS: A RECYCLED PROPOSAL FOR AN UNPRECEDENTED FEDERAL INTERVENTION

A. The Statutory Mechanics

The FLCA's procedural framework, as set out in Section 3 of S. 844, operates as follows. A union that has been recognized or certified as the exclusive representative of a group of employees triggers the bill's provisions by requesting in writing that the employer commence bargaining. At that point, the employer has ten days to do so, unless the union agrees to additional time. The parties then have ninety days to reach a first contract. At the expiration of that window, either party may invoke at any time Federal Mediation and Conciliation Service (FMCS) mediation. If thirty days of mediation fail to produce an agreement, either party may then escalate to binding interest arbitration before a three-person panel: one arbitrator selected by the employer, one by the union, and one agreed-upon neutral — defaulting to FMCS selection if the parties cannot agree.

The arbitration panel is directed to consider the employees' cost of living, wages and benefits needed to sustain employees and their families, comparator wages from similar businesses, and the employer's financial condition. Notably, the statute imposes no explicit ability-to-pay floor — an arbitrator is not required to find that a company can actually afford the award it imposes. The resulting contract runs for two years, with no worker ratification vote, no right of appeal, and no mechanism for modification short of mutual written consent.

Labor practitioners have noted that ninety days is a vanishingly short window for first-contract negotiations even in the most cooperative circumstances. Initial collective bargaining agreements are inherently more complex than successor agreements. Parties are establishing ground rules, building relationships, and negotiating terms that neither side has ever negotiated before. Compressing this process into a statutory deadline does not accelerate good-faith bargaining; it accelerates the arrival of arbitration.

B. The FLCA's Relationship to Prior Failed Legislation

The FLCA is not a new idea dressed in new clothes. It is the same idea in the same clothes. The bill's arbitration mechanism is substantively identical to the first-contract arbitration provision of the Employee Free Choice Act (EFCA), which was introduced and debated during the 110th and 111th Congresses (2007–2009). EFCA failed not for procedural reasons but because a sufficient number of legislators, including Democrats in a Congress where the party held a Senate supermajority, recognized that compulsory private-sector interest arbitration was a step the American labor relations system had never taken and should not take.

The same mechanism reappeared in the PRO Act, which cleared the House in 2021 but similarly stalled in the Senate. As commentators across the ideological spectrum have noted, the FLCA is, in

the words of labor policy commentor Matt Bruenig writing at *NLRB Edge*, a direct descendant of the EFCA arbitration provision. The FLCA repackages this twice-rejected mechanism under bipartisan branding — Senator Hawley's co-sponsorship providing the Republican imprimatur — but the substance is unchanged. Congress has declined this arrangement before. The record of what such arrangements produce, examined in Part One below, provides ample reason to decline it again.

C. The Unprecedented Nature of Government-Imposed Private-Sector Contracts

American labor law has never imposed binding interest arbitration on private-sector first contracts. The NLRA's foundational premise, in place since 1935, is that the government can require good-faith bargaining but cannot compel agreement. The FLCA would discard that premise for first contracts, substituting government imposition for mutual consent.

Advocates of the FLCA point to public-sector interest arbitration — common in states like Michigan for police and firefighters — as evidence that the mechanism works. The evidence points the other way. Heritage Foundation researchers Paul Kersey and James Sherk documented in 2007 that Michigan's public-sector arbitration system produced an average resolution time of fifteen months — longer, not shorter, than many voluntary first-contract timelines. Cases became entrenched in procedural posturing. Back-pay liability accumulated. The arbitration process that was meant to accelerate resolution instead created its own form of delay, now with the added dysfunction of government-imposed outcomes that neither party truly owned.

III. PART ONE: ECONOMIC CONSEQUENCES

A. The Perverse Incentive Structure: Rewarding Bad Faith

1. How the Arbitration Trigger Inverts Bargaining Incentives

The FLCA's fundamental structural flaw is not what it does when arbitration occurs. It is what the availability of arbitration does to the bargaining that precedes it. Under the bill's framework, failing to reach a deal within ninety days is not a failure. It is a strategy.

Consider the position of a union negotiating team facing an employer who has put a genuinely strong first offer on the table. Under current law, accepting that offer produces a contract and quick resolution for employees and the company. The company also has an incentive to do so to limit costs and reputational risk associated with prolonged bargaining. The union has an incentive to deliver meaningful change for employees within a reasonable time frame.

Under the FLCA, the incentives are much different. Neither the employer nor the union has an incentive to put reasonable positions on the table, as such positions could be used against them in arbitration. Instead, employers and unions are both incentivized to position themselves at the extremes.

This dynamic is well understood by labor relations practitioners. As labor law analyst VanDervort wrote in *LR Ink* in March 2025, the bill creates conditions in which "unions might see an advantage in stalling talks, avoiding concessions, and running out the 90-day clock." The Associated Builders and Contractors has similarly warned that the FLCA "would encourage unions to prolong negotiations in hopes of securing a more favorable deal from arbitrators."

Interest arbitration amplifies this incentive through the well-documented "split the difference" dynamic. When arbitrators are tasked with resolving a wage dispute, the rational strategy for each side is to anchor as high (or as low) as possible, since the arbitrator's award tends toward the midpoint of the competing positions. The party that enters arbitration with a maximalist demand wins more than the party that entered with a reasonable one. The FLCA thus rewards the kind of opening-position inflation that is the antithesis of good-faith bargaining.

Crucially, the union bears none of the costs that normally accompany the decision to prolong a dispute. Under current law, the union's leverage is a strike, which imposes costs on workers (lost wages) as well as employers. Under the FLCA, the union can invoke arbitration at the end of the ninety-day window at zero cost to its members, with the possibility of a more generous outcome than what the employer offered.

Thus, the FLCA provides unions with additional substantial leverage. The result is excessive union bargaining power that turns the entire bargaining process on its head, and, as noted below, can have severe economic consequences for employers and employees.

2. What the Evidence Shows: The Mercatus Study

In May 2025, economists Liya Palagashvili and Revana Sharfuddin of the Mercatus Center at George Mason University published the most comprehensive recent synthesis of the empirical literature on union power and worker outcomes. Drawing on 147 peer-reviewed studies published between 1994 and 2024 in the top five economics journals and American Economic Association-affiliated publications, their working paper, "Do More Powerful Unions Generate Better Pro-Worker Outcomes?", reaches a conclusion that is both rigorous and sobering: short-term bargaining victories by powerful unions routinely convert into long-term losses for the very workers those unions purport to represent. The paper found that when unions wield excessive bargaining power in collective bargaining negotiations and deliver "big wins at the bargaining table," companies do not absorb these costs indefinitely but rather respond "by trimming R&D, cutting capital, reducing company growth, and ultimately shrinking jobs for unionized workers."

The harm documented by Palagashvili and Sharfuddin arises not from collective bargaining per se but specifically from situations where unions' leverage is so significant that companies end up agreeing to contract terms that may harm them and their employees. Unions obtain this leverage at the bargaining table in specific situations because of the costs they threaten to impose on companies in the form of strikes, public relations attacks on the company, political pressure, and litigation. **The FLCA creates this union leverage in every single contract negotiation across the country by removing the employer's ability to refuse to agree to specific contract terms it finds unsustainable.**

The study also addresses worker preferences directly, citing survey evidence from Freeman and Rogers (2006) that workers consistently preferred unions that cooperated with management over powerful adversarial ones, even when the adversarial union won larger wage increases. An MIT survey from 2017 found that union political activity and strikes were the only two factors that made workers less likely to view organized labor favorably. The picture that emerges is of workers who want better pay and working conditions but do not necessarily want the model of confrontational monopoly bargaining that the FLCA would institutionalize.

3. The Rust Belt: The Definitive Historical Warning

The Mercatus study's empirical synthesis draws heavily on what is perhaps the most authoritative peer-reviewed examination of what happens when union monopoly power operates without an effective market check: Simeon Alder, David Lagakos, and Lee Ohanian's "Labor Market Conflict and the Decline of the Rust Belt," published in the *Journal of Political Economy* in 2023.

The paper's findings are stark. The Rust Belt's share of U.S. manufacturing employment fell from 51 percent in 1950 to 33 percent by 2000. This was not simply the story of a sector in decline. Manufacturing employment in the rest of the country held up substantially better over the same period, meaning the Rust Belt's losses reflected a shift within manufacturing, not merely a shift away from it. Alder and colleagues build a dynamic general equilibrium model to isolate the causes of this shift and reach a clear quantitative conclusion: labor market conflict — strikes, work stoppages, and

the wage premiums that reflected the leverage of the Rust Belt's unusually powerful union concentrations — accounted for approximately 55 percent of the region's manufacturing employment decline. Globalization played a role, but a secondary one, concentrated largely in the 1980s after most of the damage had already been done.

The data on unionization and work stoppages are particularly striking. Between 1973 and 1980, 48.1 percent of Rust Belt manufacturing workers were union members, compared to 28.4 percent in the rest of the country. While unionization rates were roughly twice as high, work stoppage rates were seven times higher. The relationship was causal: industries and regions with higher rates of labor conflict experienced substantially lower employment growth, a relationship that held after controlling for industry fixed effects, climate, and initial industry concentration. And when the Rust Belt's labor conflict moderated in the 1980s — as wage premiums fell and work stoppages subsided — the region's employment decline stabilized.

The message for the FLCA debate is direct. The bill would institutionalize, at a national level and in the private sector's most dynamic first-contract situations, the same circumstances that produced the Rust Belt's collapse. By removing the employer's ability to walk away from excessive demands — replacing the negotiating table with an arbitration panel — it replicates the unchecked monopoly leverage that drove manufacturers out of the Midwest.

The Rust Belt is not an abstraction. It is a documented outcome. The FLCA is a proposal to reproduce the conditions that created it.

4. Small Businesses Are Particularly Vulnerable

The FLCA's burden does not fall equally. Large employers — with sophisticated legal departments, the financial capacity to absorb adverse arbitration awards, and the operational scale to spread contract costs across large workforces — can navigate an arbitration proceeding, even an unfavorable one, and survive. Small and mid-sized employers cannot.

For a regional logistics company, a small food processor, or a mid-sized construction firm suddenly subject to arbitrated first-contract terms calibrated to the largest union contracts in the industry, the FLCA's awards are not a cost to be managed. They are a potential existential threat. There is no small-business carve-out.

The U.S. Chamber of Commerce has observed that FLCA mandates "could force employers into expensive, long-term agreements that include risky pension plans and big spending. That kind of pressure can stop businesses from growing, hiring, or even making payrolls." For small and mid-sized employers, that observation is not rhetorical. It is a description of arithmetic.

B. Case Studies: When Union Demands Went Too Far

The Mercatus study does not limit itself to historical analysis. It grounds its theoretical framework in a series of contemporary case studies documenting what happens, in the current moment, when union monopoly power delivers seemingly transformative bargaining victories. In each case, the

pattern is the same: record-breaking contracts, followed within months or years by large-scale layoffs, decreased investments, and business closures. No single factor explains a company's restructuring decisions – and correlation is not causation, but when the pattern is this stark and commonplace, it is not coincidence. It is the market's response to costs that were unsustainable from the moment they were imposed.

1. UPS: The Teamsters Contract and the Network Reconfiguration

In the summer of 2023, UPS and the International Brotherhood of Teamsters reached a new five-year contract, which was hailed as one of the most significant labor victories in recent memory. Full-time driver pay rose substantially; part-time pay floors were raised; new benefits were added. Just five months later, on January 30, 2024, UPS announced it was cutting 12,000 jobs to realize $1 billion in cost savings. Then, on January 30, 2025, the company disclosed what it called the "largest network reconfiguration" in its history — a restructuring that "could result in the closure of up to 10 percent of our buildings, a reduction in the size of our vehicle and aircraft fleets, and a decrease in the size of our workforce." The *Wall Street Journal* captured the dynamic in a February 2025 headline: "Reality Bites UPS and the Teamsters."

Under the FLCA's arbitration framework, an arbitrator setting the terms of a first contract for any newly organized logistics employer would look to the Teamsters-UPS agreement as the "comparator wages" standard. The employer would have no ability to negotiate trade-offs, no ability to account for differences in business model or volume, and no path to declining terms that proved unaffordable in practice.

2. Stellantis: The One-Year Reckoning

The 2023 UAW strike against the Big Three automakers — Ford, GM, and Stellantis — lasted 46 days and produced record wage increases, enhanced benefits, and other gains that Stellantis management had previously characterized as financially unsustainable. One year later, in November 2024, Stellantis laid off 1,100 workers at its Toledo South Assembly plant — the Jeep Gladiator facility in Ohio. The company cited high inventory levels and reduced earnings. The timeline from "historic contract" to "mass layoff" was twelve months.

Since the contract negotiations, the three automakers have announced thousands of other layoffs. The combined post-contract figure across all three companies, blending temporary and permanent layoffs, is somewhere well north of 10,000 UAW hourly workers – and potentially as high as 20,000.

The UAW's strike against the Big Three cost the companies billions in lost production — a cost ultimately borne not only by the automakers but by workers in the supply chain and communities dependent on those facilities. Under the FLCA, no strike is required to impose these terms on the next employer. An arbitrator applies the comparator standard, and the new employer receives a contract calibrated to companies far larger, with legacy workforces and cost structures that a newly built facility can never replicate.

3. Boeing: $9.7 Billion and 10 Percent of the Workforce

In the fall of 2024, members of the International Association of Machinists and Aerospace Workers (IAM) District 751 struck Boeing's West Coast facilities. The work stoppage lasted 53 days, halting most jet production at Boeing's commercial airplane facilities and costing Boeing and its supply chain an estimated $9.7 billion, according to analysis by Anderson Economic Group. The IAM's members ultimately ratified a new four-year contract. One month after the strike ended, Boeing announced it was laying off 10 percent of its global workforce — approximately 17,000 people. CEO Kelly Ortberg stated plainly that the company's business required "structural changes."

The sequence — costly strike, transformative contract, mass layoff — is by now familiar. Short-term bargaining victories, delivered without reference to what the employer can sustain, produce downstream employment losses that fall hardest on the workers the union set out to help.

Under the FLCA's arbitration framework, an arbitrator has no obligation to weigh these downstream consequences. The bill provides no mechanism for holding an arbitration panel accountable if the contract it imposes proves unaffordable. It simply moves on to the next employer.

4. Yellow Freight: The Endpoint

The cases above illustrate a cycle. Yellow Freight illustrates where the cycle ends. On August 6, 2023, Yellow Corporation — the third-largest less-than-truckload freight carrier in the United States, generating over $5.2 billion in operating revenue in 2022 — filed for Chapter 11 bankruptcy. It was the largest bankruptcy in trucking history. Thirty thousand employees lost their jobs, including 22,000 Teamsters members.

Yellow alleged in its bankruptcy filings and subsequent litigation that the Teamsters, under the direction of IBT President Sean O'Brien, had "unjustifiably blocked, for over eight months" the company's "One Yellow" restructuring plan — a proposal to consolidate the company's four operating subsidiaries into a single network in order to compete against non-union carriers. The company alleged that O'Brien was willing to let Yellow fail in order to demonstrate strength ahead of upcoming negotiations with UPS and TForce. On November 5, 2025, the U.S. Court of Appeals for the Tenth Circuit revived Yellow's lawsuit against the Teamsters, reversing a lower court dismissal and finding that Yellow's amended complaint adequately pleaded that the union had repudiated its collective bargaining obligations. Yellow is seeking at least $1.5 billion in lost enterprise value.

The pension dimensions of the Yellow collapse are equally relevant to the FLCA debate. Upon bankruptcy, Yellow faced $6.5 billion in withdrawal liability claims from eleven Teamsters multiemployer pension plans. Federal Bankruptcy Judge Craig Goldblatt ruled in September 2024 that Yellow must pay at least some of that liability. The Central States Teamsters pension fund, which held approximately $5 billion of those claims, had itself received a $35.8 billion taxpayer bailout under the American Rescue Plan just months before the Yellow collapse — yet still is projected to be solvent only through 2051.

Heritage Foundation researcher James Sherk predicted exactly this dynamic in 2009, when writing about EFCA's identical arbitration provision: that arbitrators following existing CBA precedents in trucking, construction, and food service would funnel newly organized employers into the same severely underfunded multiemployer pension plans that had accumulated these liabilities.

Yellow is the documented endpoint of that pipeline. The FLCA would reopen it for every newly organized employer in industries where multiemployer plans are standard.

C. The VW Chattanooga Hypothetical: What an Arbitrator Would Have Done

1. What Actually Happened: 22 Months to a First Contract

In April 2024, workers at Volkswagen's assembly plant in Chattanooga, Tennessee, voted to be represented by the UAW — the first successful UAW organizing drive at a foreign-owned auto plant in the American South. VW had no prior experience as a unionized employer in the United States. What followed was a textbook example of complex and difficult, but ultimately productive, voluntary bargaining.

Negotiations ran from April 2024 through February 2026 — twenty-two months. Workers voted in October 2025 to authorize a strike, fourteen months into talks, reflecting genuine frustration with the pace. VW submitted its final offer in late 2025. A tentative agreement was reached on February 5, 2026, and ratified on February 19–20, 2026, by 96 percent of voting members. The contract that workers voted to accept — overwhelmingly — reflected terms calibrated to VW's actual circumstances as a single, newly built plant competing against non-union Southern transplants and VW's own German home production.

VW made its negotiating position explicit throughout: "We are a single factory that must remain competitive in an uncertain economy. We won't agree to anything that could limit our ability to invest in Chattanooga in the future." The final contract delivered a 21.6 percent compounded wage increase over four years, a top production wage rising from $34.02 to $39.41 by 2030, a COLA provision capped at 45 cents, a $4,000 ratification bonus, and improved healthcare and job security language.

2. What an Arbitrator Would Likely Have Imposed Instead

Under the FLCA's 90-day window, arbitration would have been triggered by approximately July 2024 — nineteen months before VW submitted its final offer, and before the parties had resolved the most fundamental structural questions about wages, benefits, and operational flexibility. An arbitrator directed to consider "wage and benefit standards from similar businesses" would likely have looked first to the 2023 Big Three-UAW contracts — the most recent, most comprehensive, and most visible comparator agreements in the American auto industry.

The table below sets out the terms of the Big Three agreements alongside VW's final negotiated outcome, with an assessment of the arbitration risk at each term.

Term	Big Three UAW (2023)	VW Final Offer (2026)	Arbitration Risk
Wage increase	~25% compounded	~21.6% compounded	Arbitrator anchors toward 25%
COLA structure	CPI-indexed quarterly, uncapped	Capped at 45¢, non-compounding	Arbitrator applies uncapped structure
Top production wage (end of contract)	~$42.60/hr (Ford assembly)	~$39.41/hr	~$3.19/hour gap
Two-tier abolition	Yes — top pay in 3 years	Addressed; different structure	Structural imposition risk
Outsourcing moratorium	Yes	Job security language only	Stronger restriction risk
DEI program MOU	Yes — Appendix X (Ford)	Not confirmed in VW contract	Political provision risk
Investment commitments	$8.1B across all Ford plants	Single-plant language	Mismatched scale

Sources: UAW, Chattanooga Times Free Press, CBT News, CBS News, Federal Reserve Bank of Chicago

The structural mismatch between these two employers cannot be overstated. VW Chattanooga employs approximately 3,000 workers at a single facility in a lower cost-of-living state. Ford's UAW-represented workforce exceeds 57,000, spread across dozens of plants with decades of established labor relations, legacy retiree populations, and cost structures built around COLA provisions that have been in place since the 1970s. The Big Three contracts were negotiated in light of those specific facts. An arbitrator applying Big Three terms to VW would be importing cost structures from a fundamentally different industrial context — and doing so without any ability for VW to decline.

The VW case illustrates the FLCA's core problem with unusual clarity. Twenty-two months of voluntary bargaining produced an agreement that 96 percent of workers voted to ratify. The FLCA would have short-circuited that process at month three and would likely have replaced it with a government-imposed contract based on inapplicable comparators — delivering, at best, a contract no worker ever voted on, and at worst, terms that could have imperiled VW's willingness – and ability – to continue investing in Chattanooga.

D. The Insider-Outsider Problem: Union Contracts Harm Young and Future Workers

The economic literature on union contracts, synthesized by Palagashvili and Sharfuddin (2025), documents a systematic pattern through which powerful union agreements benefit current, senior

members — "insiders" — at the direct expense of younger workers, new entrants, and the workers who will seek employment at the firm in the future — "outsiders."

Job security clauses, seniority-based promotion structures, and restrictive work rules all operate, in practice, as barriers to employment for workers who do not yet have a place in the bargaining unit. Topel and Ward's 1992 study in the *Quarterly Journal of Economics* found that early-career job transitions account for a large fraction of wage growth among young men — precisely the kind of mobility that entrenched union contracts suppress. An arbitrated two-year contract that locks in seniority structures calibrated to the existing membership's interests forecloses opportunity for the next generation of workers, who have no seat at the table and no vote on the outcome.

Italy's experience with labor market liberalization offers a useful inverse illustration. When Italy loosened its rigid union job security laws in recent years, employment increased — particularly among younger workers who had previously been shut out of covered positions. The FLCA would push the American labor market in the opposite direction, imposing at the moment of first-contract arbitration exactly the seniority and security structures whose relaxation, elsewhere, has demonstrably opened doors for younger workers.

E. Forced Enrollment in Underfunded Multiemployer Pension Plans

In industries where multiemployer pension plans are standard — trucking, construction, food service, building trades — an FLCA arbitrator following existing CBA comparators would almost certainly direct newly organized employers to participate in those plans. The employer would have no ability to decline, no opportunity to assess the plan's funded status before the obligation attaches, and no meaningful recourse after the fact.

The Yellow Freight bankruptcy makes concrete what this exposure looks like at scale. Yellow's withdrawal from eleven Teamsters multiemployer pension plans upon its 2023 bankruptcy triggered $6.5 billion in withdrawal liability claims. The Central States Teamsters pension fund alone held $5 billion of those claims — after having received a $35.8 billion taxpayer bailout under the American Rescue Plan in December 2022. Despite that infusion, the fund is projected to be solvent only through 2051.

Workers newly enrolled in such a plan via arbitration would be enrolled in an obligation they never chose, whose financial condition they cannot independently verify, and whose long-run insolvency risk they will ultimately bear alongside the current participants. As stated earlier, Heritage Foundation researcher James Sherk predicted this specific outcome in 2009, writing about EFCA's identical arbitration provision: that arbitrators following trucking CBA precedents would funnel new employers into the same underfunded multiemployer plans that had accumulated these liabilities. The Yellow bankruptcy is the realized version of that prediction. The FLCA would reproduce the mechanism – and likely the result.

F. The FMCS Capacity Problem: An Administrative Failure Baked In

The FLCA's proponents have not grappled seriously with what mandatory FMCS mediation would actually require. According to FMCS's own FY2026 budget request, the agency had approximately 191 employees in 2025 and is requesting funding for only 18 employees for 2026. The FLCA would direct this agency to administer mandatory mediation for every first-contract dispute arising among the roughly 33 million businesses that constitute the U.S. employer universe. There is no staffing plan, no funding mechanism, and no plausible pathway to the capacity this mandate would require.

The administrative absurdity is compounded by a direct policy contradiction. On March 14, 2025 — just ten days after the FLCA's introduction — President Trump signed an executive order directing the elimination of FMCS's non-statutory functions "to the maximum extent consistent with applicable law." Congress is thus being asked to mandate a massive expansion of an agency that the executive branch is simultaneously seeking to shrink toward a skeletal statutory core.

The practical result would be an arbitration pipeline that cannot function at scale. Cases would queue, deadlines would be missed, and the delays produced by the FLCA's own administrative machinery would likely exceed the current average timeline for voluntary first-contract bargaining — the precise problem the bill purports to solve. The FLCA would not accelerate collective bargaining. It would replace one set of delays with another, while adding the costs, uncertainty, and adversarial dynamics of mandatory arbitration proceedings.

G. No Surprises Act: A Cautionary Tale

Congress has seen this dynamic play out before, in a different industry and with different parties, and the results were ruinous. The No Surprises Act, passed with bipartisan majorities to protect patients from unexpected out-of-network medical bills, included a mandatory arbitration mechanism through which doctors and insurers could resolve billing disputes before a government-approved arbitrator. The structure was straightforward: each side proposes a number, the arbitrator picks one, and the decision is final with no appeal. The incentive that structure created was equally straightforward — and identical to the one the FLCA would create in labor negotiations. Providers quickly recognized that submitting maximalist demands cost them nothing and won them far more than any negotiated rate.

Government data published by the Centers for Medicare and Medicaid Services and analyzed by Georgetown's Center on Health Insurance Reforms found that providers filed approximately 1.2 million arbitration cases in the first half of 2025 alone — against an original federal projection of roughly 17,000 cases per year — and won approximately 88 percent of them. A *Health Affairs* analysis estimated that the high volume of claims had generated at least $5 billion in excess healthcare costs through 2024; arbitrators, paid between $425 and $1,150 per case, earned $885 million in fees from 2022 to 2024 alone — creating their own financial incentive to keep cases flowing.

A *New York Times* investigation, published in April 2026, analyzed data on more than three million arbitration disputes. The authors documented individual awards that illustrated the dynamic in concrete terms: a neurosurgery practice received $333,000 for a diagnostic procedure for which the insurer had offered $2,660; a single plastic surgery practice won more than $1.4 million across five breast reduction surgeries, including one award of $440,000 for a procedure the same surgeon had previously performed for $30,000 or less for hundreds of other patients. These arbitrators approved awards that bore no relationship to market rates. The law's own co-author, Representative Frank Pallone (D-NJ-6), acknowledged that the arbitration mechanism had spiraled beyond its intent: "I'm still glad we passed the bill, because we got consumers out of it, but we need to rein in this arbitration process."

The No Surprises Act is a concrete example of how a mandatory arbitration system can be gamed and how it can veer dramatically off course from what Congress originally intended.

H. The Taxpayer Cost: Federal Administration, Pension Exposure, and Broader Economic Harm

The FLCA's costs are not limited to the employers and workers caught in its arbitration pipeline. They extend, in three distinct ways, to American taxpayers who have no party in the negotiations and no vote on the outcome.

Direct Federal Administrative Costs. The FLCA mandates that the FMCS administer mandatory mediation for every unresolved first-contract dispute in the American private sector — a universe that, as noted above, encompasses roughly 33 million businesses. FMCS is simultaneously being reduced to a skeletal statutory core by executive order. Congress has not appropriated — and the FLCA does not authorize — any funding to staff, equip, or scale the agency to meet this mandate. The result is a federally imposed obligation that can be discharged only through new appropriations. Taxpayers will fund the arbitrators, the mediators, the administrative infrastructure, and the inevitable litigation over procedural defects for a mandate they did not request and a mechanism that Congress has twice before declined to create.

Indirect Exposure through Pension Bailouts. The more significant taxpayer risk is indirect, and the precedent for it already exists. When Yellow Freight collapsed in 2023, the Central States Teamsters pension fund — holding approximately $5 billion in Yellow's withdrawal liability claims — had received a $35.8 billion taxpayer bailout under the American Rescue Plan just months earlier. That bailout did not prevent the fund's projected insolvency by 2051; it merely delayed it. The mechanism the FLCA would create — arbitrators directing newly organized employers into underfunded multiemployer plans as a matter of course — is precisely the mechanism that produces the pension liabilities that ultimately fall on taxpayers. Each new employer funneled into a plan with unfunded liabilities adds to an obligation that, as the Central States bailout demonstrates, Congress has shown it will not allow to collapse. The FLCA does not create this dynamic. It accelerates it, at scale, across every newly organized employer in industries where multiemployer plans are standard.

Broader Economic Costs. The least visible taxpayer cost is also the largest. When arbitrated contracts impose terms that employers cannot sustain, as the documented record at UPS, Stellantis, Boeing, and Yellow Freight demonstrates they can, the downstream consequences include mass layoffs, facility closures, and reduced investment in the affected communities. Each of these outcomes generates its own federal fiscal exposure: unemployment insurance claims, loss of payroll and corporate tax revenue, demand for social services in communities where the anchor employer has downsized or closed. The Rust Belt's manufacturing employment collapse — 55 percent of which Alder, Lagakos, and Ohanian attribute to labor market conflict — imposed fiscal costs on federal, state, and local governments that persisted for decades. The FLCA would not reproduce the Rust Belt's specific industrial geography, but it would reproduce the incentive structure that drove it: unchecked monopoly bargaining power, applied at the moment of maximum employer vulnerability, without a market mechanism to correct outcomes that prove unaffordable.

Taken together, these three cost categories describe a bill whose fiscal consequences are open-ended, whose administrative costs are unfunded, and whose indirect taxpayer exposure grows with every employer directed into an underfunded pension plan. The FLCA's proponents have not addressed any of them.

IV. PART TWO: NONECONOMIC CONSEQUENCES

A. Worker Rights: Elimination of the Worker Ratification Vote

The FLCA's most fundamental attack on worker rights is one its proponents rarely discuss: the complete elimination of the worker ratification vote for any contract produced by arbitration. Under current law, the democratic core of collective bargaining is the moment when workers themselves — not their representatives, not an arbitrator, not a government agency — vote yes or no on the proposed terms. It is the check that ensures the union's negotiators remain accountable to the membership. It is the mechanism that catches the gap between what a negotiating team accepts and what workers will actually live under.

Under FLCA arbitration, that check disappears entirely. The arbitration panel's decision is final and binding for two years, without a ratification vote. Workers cannot strike against an arbitrated contract, regardless of how objectionable its terms. Workers dissatisfied with an arbitrated agreement cannot begin decertification proceedings until the two-year term expires — trapped in representation they may not want, under terms they never approved.

In states without right-to-work protections, the situation is worse still. Arbitrators following existing CBA precedents in those states would likely include forced-dues provisions as standard terms, compelling workers to pay union dues to an organization whose contract they never voted to accept.

The most pointed testimony against the FLCA's elimination of ratification rights came not from a business association or a conservative policy organization but from a union shop steward testifying before the U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee.

On October 22, 2025, Joshua Arnold — an eleven-year IAM District 837 member and shop steward at Boeing's St. Louis defense facility — testified before the Committee, invited by Senator Bernie Sanders (I-VT). During the hearing, when the topic of binding arbitration arose, Arnold did not mince words: a government-imposed contract that workers could not ratify or reject "would be removing the democracy in the workplace, which is the whole point of the union — giving the worker a say."

This is not a fringe position. Arnold was a Democratic witness at the hearing, speaking about a policy championed by his own party's leadership. His words reflect a concern shared by thoughtful union members across the labor movement: that a contract workers had no voice in approving is not a union contract in any meaningful sense. It is a government contract, imposed by bureaucratic fiat, that happens to use union terminology.

New polling from the U.S. Chamber of Commerce found that 90 percent of voters oppose government-mandated union contracts that workers themselves do not approve. The FLCA is precisely such a mandate. Its supporters owe workers a more honest accounting of what they are proposing to take away.

B. The Foundational Principle under Attack

The NLRA's voluntary bargaining framework, in place since 1935, rests on a principle that is both foundational to American labor law and foundational to American contract law: neither party can be compelled to agree to any specific term or to reach a final agreement. The government can require good-faith effort. It cannot dictate the outcome. The FLCA would discard this principle for first contracts, replacing mutual consent — the very foundation of an enforceable agreement — with government imposition.

This is not, as the bill's proponents frame it, a procedural acceleration of the bargaining process. It is a structural transformation of the employer-employee relationship with no precedent in American private-sector labor law. As Senator Morse noted in 1963:

> [I]f you go into arbitration – and there are some who want to go into compulsory arbitration – you are taking away from the parties, management, and labor, some very precious freedoms. You are substituting a third party and asking that third party, in effect, to tell them how they are going to run their business, and under what conditions they are going to work. That is a dangerous situation. It is a situation that attacks, in my judgment, some basic foundations of economic freedom in this Republic. Congressional Record, February 20, 1963, 2632.

C. Constitutional Dimensions

The FLCA's constitutional vulnerabilities are substantial. Richard Epstein, one of the most distinguished property rights and contract law scholars in the United States, analyzed the identical EFCA arbitration provision in 2008 and concluded that it is constitutionally infirm on multiple grounds. The intervening years, and a significant body of Supreme Court precedent on the structural limits of delegated authority, have only strengthened that assessment.

Takings Clause. The government imposition of specific contract terms on a private employer without consent implicates the Fifth Amendment's Takings Clause. Contract rights are property. Compelling an employer to accept specific contract terms, including potential commitments to fund pension plans, provide specific benefits, or accept operational restrictions, without compensation constitutes an uncompensated taking of those property rights. This argument requires precision: regulations routinely constrain private contracts, and minimum wage laws or mandatory benefit requirements are not takings merely because they limit what employers can offer. The FLCA is different in kind, not just degree. Ordinary employment regulation sets a floor and leaves the parties free to bargain above it. The FLCA replaces bargaining entirely, substituting a government-imposed outcome for the parties' own agreement and extinguishing the employer's right to decline any specific term. That is not regulation of a contract. It is compelled execution of one.

Vesting Clause and Appointments Clause. The more substantial structural defects arise under Articles I and II of the Constitution. The Vesting Clauses require Congress to exercise all legislative power and the Executive to exercise all executive power; neither can be delegated to private parties

unless those parties remain subordinate to a government official, meaning the official retains the ability to review, reject, or modify the private party's decision. The FLCA satisfies neither condition. Once the arbitration panel issues its award, the decision is final. No agency can review it. No official can modify it. The parties have no appeal to any branch of government. The arbitrators are not subordinate — they exercise unsupervised authority over binding employment terms with the force of law. That is a Vesting Clause problem of the first order.

It is also an Appointments Clause problem. Arbitrators under the FLCA exercise significant authority. They can determine wages, benefits, and working conditions for potentially thousands of employees for a two-year term. Officers exercising such authority must be appointed by the president, a court of law, or a department head. The FLCA uses a process that satisfies none of these requirements, as arbitrators are selected by the parties or, by default, by FMCS. Appointments Clause challenges have been among the most successful theories for constraining federal overreach in recent years, and the FLCA is directly in their path.

State Action and Workers' Constitutional Rights. A further defect arises from the FLCA's transformation of private contracts into state action. Collective bargaining agreements are today private contracts and need not comply with constitutional requirements. Because the FLCA would impose arbitrated contracts by statute — potentially over the objection of both parties — the resulting agreements would constitute state action and would be subject to constitutional scrutiny. This would cast doubt on many standard contractual provisions: internal grievance procedures would have to satisfy due process, and fair-share fee arrangements would have to survive First Amendment review.

The constitutional exposure extends to workers as well as employers. An arbitrator operating without the constraint of worker ratification could impose a no-strike clause — stripping workers of their most fundamental form of collective action — without the consent of the employees bound by it. Whether a government-compelled prohibition on work stoppage, imposed without worker agreement, raises Thirteenth Amendment concerns is a question the FLCA's drafters have not addressed. That they have not is itself telling: a bill that can plausibly implicate the constitutional prohibition on involuntary servitude is a bill whose authors have not thought carefully enough about what they are proposing.

Contract Doctrine. The Heritage Foundation's 2025 labor law reform analysis raises a further concern rooted not in constitutional law but in basic contract doctrine: mutual assent — the agreement of both parties to specific terms — is a required element of an enforceable contract under common law. A contract imposed by government fiat, without the consent of the parties, may be legally unenforceable in ways the FLCA's drafters have not accounted for, creating enforcement confusion that compounds the bill's other deficiencies.

D. The Political Agenda Problem: FLCA as a Vehicle for Union Political Demands

1. No Check on Politics in Contracts

The FLCA's arbitration requirements have a glaring structural flaw that its proponents have not addressed: there is no filter on what a union can demand or an arbitrator can order including provisions that have nothing to do with wages, hours, or working conditions in any traditional sense.

This is not a theoretical concern. In the current moment, unions across multiple industries have actively negotiated contract provisions on immigration enforcement, diversity, equity, and inclusion (DEI) initiatives, and gender-affirming healthcare, all of which may conflict with federal and state government policy and enforcement positions. Below we provide examples of such demands. Under current law, an employer can decline to agree to such provisions. Under the FLCA, an arbitrator would face them as established contract standards with no statutory basis for exclusion.

Moreover, once adopted in one contract, these provisions can and likely will proliferate given the FLCA encourages arbitrators to look to other contracts. A warrant requirement for ICE access, bargained by a single Teamsters local in Seattle, becomes the comparator for a food processing plant in Georgia or a Memorandum of Understanding from a Ford motor plant becomes the baseline for an auto supplier in a right-to-work state. This is not collective bargaining. Activists are being given a means to force their political agenda onto others and are bypassing the electoral process to do so.

2. Immigration Enforcement: Demanding Employers Block ICE

In June 2025, workers at Mauser Packaging Solutions' Chicago facility — represented by Teamsters Local 705 — went on strike. Among the unresolved contract demands was language requiring ICE to present a judge-signed judicial warrant before accessing company property. Workers voted 120 to 0 to reject Mauser's final offer, with the union's chief negotiator explicitly citing "watered down language on ICE having access to company property without a judicial warrant" as one of the central issues. The strike ended in November 2025 when Mauser announced permanent plant closure — the employer consent check functioned, at the cost of every job in the facility.

What is significant for FLCA purposes is that Local 705 explicitly framed its ICE warrant demand as replicating language already bargained by Seattle Teamsters Local 117. That contract is now in the record. An arbitrator evaluating a first contract for a comparable food or packaging facility in any state could encounter that provision as an established comparator standard, with no statutory basis to exclude it from a binding award. UFCW locals in California have pursued similar provisions in negotiations with El Super grocery stores.

3. Gender-Affirming Healthcare: Mandating Coverage Conflicts

UAW Local 4811, representing academic student employees across the University of California system, has included in its active bargaining demands an explicit provision to "protect workers' access to essential healthcare services including gender-affirming care, birth control, and abortion."

The UC system is simultaneously under pressure from a Trump administration DOJ settlement proposal that would require the elimination of gender-affirming care for patients under eighteen and the removal of affirmative action in hiring and admissions. In response, Local 4811, Teamsters Local 2010, and eighteen additional UC system unions filed suit against the Trump administration. There is no provision of the FLCA that allows the arbitrator to exclude coverage mandates that conflict with current federal policy even though inclusion could trigger a government enforcement action against the employer.

4. DEI Provisions: From Ford's Contract to the Nation's First Contracts

The 2023 Ford-UAW master agreement — the definitive "comparator" document in the American auto industry — includes, as Appendix X, a "Joint Diversity, Equity, and Inclusion Program Memorandum of Understanding." This is a contractually binding DEI program embedded in an 865-page, 313-line-item collective bargaining agreement, and it is precisely the kind of non-wage political provision that an employer, absent compulsion, would decline to accept.

Under the FLCA, an arbitrator has no statutory authority to filter out such provisions. If they appear in the comparator contract, they are available for inclusion in the award. An arbitrator applying the Ford contract as the comparator for a newly organized auto supplier or assembly plant would encounter Appendix X and face no statutory basis to exclude it from the award, creating a direct conflict with the Trump administration's January 2025 executive orders on DEI in federal contracting and workplace settings.

V. CONCLUSION

The Faster Labor Contracts Act does not accelerate collective bargaining. It replaces it. In place of voluntary negotiation, it substitutes a government-managed pipeline terminating in compulsory arbitration. In place of worker ratification votes, it substitutes bureaucratic finality. In place of market-calibrated employment terms, it substitutes comparator-based awards drawn from the most aggressive union contracts in each industry, with no filter for political content, no ability-to-pay floor, and no accountability if the outcome proves unaffordable.

The economic record is unambiguous. When union monopoly power operates without the market check that voluntary bargaining provides, the result is not a permanent improvement in worker welfare. It is a short-term wage gain followed by capital flight, reduced investment, and downstream job losses. This is not a theoretical prediction. It is the documented history of the Rust Belt, where labor market conflict accounted for 55 percent of the region's manufacturing employment decline between 1950 and 2000. It is the recent experience of UPS, Stellantis, and Boeing, where record-breaking contracts preceded mass layoffs within months. It is the final chapter of Yellow Freight, where 30,000 workers lost their jobs, $6.5 billion in pension liabilities fell on a bankrupt estate, and $35.8 billion in taxpayer funds were required to backstop a pension fund that still is projected to be solvent only through 2051.

The noneconomic record is equally clear. Workers who cannot vote on their own contracts are not workers who have been empowered. They are workers who have been pushed aside. It bears repeating that Josh Arnold, the union shop steward testifying before the Senate HELP Committee, said it plainly: removing workers' ability to vote on their own contract "would be removing the democracy in the workplace, which is the whole point of the union — giving the worker a say." That critique came from a real worker who is supportive of organized labor and who was invited to the hearing by the FLCA's Democratic champions.

Congress has considered this mechanism twice before. It declined to enact it as part of EFCA, even when Democrats held a Senate supermajority. It declined it again in the PRO Act. The FLCA offers the same mechanism with Republican co-sponsors' names attached. The evidence that has accumulated since those earlier debates — in peer-reviewed economics journals, in bankruptcy courts, on factory floors from Toledo to Chattanooga — does not strengthen the case for compulsory arbitration. It strengthens the case against it.

Members of Congress who care about workers' wages, workers' democratic voice, and the survival of the employers who create the jobs that make those wages possible should oppose the Faster Labor Contracts Act.

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