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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CARTWRIGHT introduced the following bill; which was referred to the Committee on _____

A BILL

To secure the rights of public employees to organize, act concertedly, and bargain collectively, which safeguard the public interest and promote the free and unobstructed flow of commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Service Free-
5 dom to Negotiate Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act:

1 (1) APPROPRIATE UNIT.—The term “appro-
2 priate unit” means a group of public employees or
3 a group of supervisory employees appropriate for
4 collective bargaining that share a community of in-
5 terest, as demonstrated by factors including whether
6 such group—

7 (A) has a bargaining history or history of
8 prior organization; and

9 (B) reflects the desires of the employees
10 who are seeking or proposing representation by
11 a labor organization regarding the employees to
12 be included in such bargaining unit.

13 (2) AUTHORITY.—The term “Authority” means
14 the Federal Labor Relations Authority.

15 (3) COLLECTIVE BARGAINING.—The term “col-
16 lective bargaining”, used with respect to public em-
17 ployees, supervisory employees, and public employ-
18 ers, means the performance of the mutual obligation
19 of the representative of a public employer and the
20 exclusive representative of public and supervisory
21 employees in an appropriate unit of the employer to
22 meet at reasonable times and to consult and bargain
23 in a good-faith effort to reach agreement with re-
24 spect to wages, hours, and other terms and condi-
25 tions of employment affecting such employees and to

1 execute a written document incorporating any collec-
2 tive bargaining agreement reached, but the obliga-
3 tion referred to in this paragraph does not compel
4 either party to agree to a proposal or to make a con-
5 cession (as described in section 8(d) of the National
6 Labor Relations Act (29 U.S.C. 158(d))).

7 (4) CONFIDENTIAL EMPLOYEE.—The term
8 “confidential employee” means an employee of a
9 public employer who acts in a confidential capacity
10 with respect to an individual who formulates or ef-
11 fectuates management policies in the field of labor-
12 management relations.

13 (5) COVERED PERSON.—The term “covered
14 person” means an individual or a labor organization.

15 (6) EMERGENCY SERVICES EMPLOYEE.—The
16 term “emergency services employee” means—

17 (A) a public employee providing out-of-hos-
18 pital emergency medical care, including an
19 emergency medical technician, paramedic, or
20 first responder; or

21 (B) a public employee providing other serv-
22 ices in response to emergencies that have the
23 potential to cause death or serious bodily in-
24 jury, including an employee in fire protection
25 activities (as defined in section 3(y) of the Fair

1 Labor Standards Act of 1938 (29 U.S.C.
2 203(y)).

3 (7) LABOR ORGANIZATION.—The term “labor
4 organization” means any organization of any kind
5 that is not under the control directly or indirectly by
6 a public employer in which such employees partici-
7 pate and which exists for the purpose, in whole or
8 in part, of dealing with public employers concerning
9 grievances, labor disputes, wages, rates of pay, hours
10 of employment, or conditions of work.

11 (8) LAW.—The term “law”, used with respect
12 to a State or a political subdivision thereof, includes
13 the application of the laws of such State or such po-
14 litical subdivision, including any regulations or ordi-
15 nances issued by such State or such political subdivi-
16 sion.

17 (9) LAW ENFORCEMENT OFFICER.—The term
18 “law enforcement officer” has the meaning given
19 such term in section 1204 of the Omnibus Crime
20 Control and Safe Streets Act of 1968 (34 U.S.C.
21 10284).

22 (10) MANAGEMENT EMPLOYEE.—The term
23 “management employee” means an individual em-
24 ployed by a public employer in a position the duties

1 and responsibilities of which require the individual to
2 formulate or determine the policies of the employer.

3 (11) PUBLIC EMPLOYEE.—The term “public
4 employee”—

5 (A) means an individual, employed by a
6 public employer, who in any workweek is en-
7 gaged in commerce or is employed in an enter-
8 prise engaged in commerce;

9 (B) includes an individual who is tempo-
10 rarily transferred to a supervisory or manage-
11 ment position; and

12 (C) does not include—

13 (i) a supervisory employee;

14 (ii) a management employee;

15 (iii) a confidential employee;

16 (iv) an elected official;

17 (v) a law enforcement officer em-
18 ployed by a public employer as defined in
19 section 2(a)(12)—

20 (I) who has statutory authority
21 to make arrests or apprehensions;

22 (II) who is authorized by the
23 agency of the employer to carry fire-
24 arms; and

1 (III) whose duties substantially
2 include the engagement in or super-
3 vision of the prevention, detection, or
4 investigation of any person for any
5 violation of law: *Provided*, That a law
6 enforcement officer whose duties sub-
7 stantially include the engagement in
8 or supervision of corrections, proba-
9 tion, parole, or juvenile detention
10 functions shall be a public employee
11 under this Act.

12 (12) PUBLIC EMPLOYER.—The term “public
13 employer” means an entity that—

14 (A) employs not less than 1 individual;

15 (B) is engaged in commerce; and

16 (C) is either—

17 (i) a State or the political subdivision
18 of a State; or

19 (ii) any authority, agency, school dis-
20 trict, board or other entity controlled and

21 operated by an entity described in clause

22 (i).

23 (13) SUBSTANTIALLY PROVIDES.—The term
24 “substantially provides”, used with respect to the
25 rights and procedures described in section 3(b),

1 means providing rights and procedures that are
2 equivalent to or greater than each of the rights and
3 procedures described in such section.

4 (14) SUPERVISORY EMPLOYEE.—The term “su-
5 pervisory employee” means an individual, employed
6 by a public employer, who in any workweek is en-
7 gaged in commerce or is employed in an enterprise
8 engaged in commerce and who—

9 (A) has the authority in the interest of the
10 employer, if the exercise of such authority is
11 not merely routine or clerical in nature but re-
12 quires the consistent exercise of independent
13 judgment, to—

14 (i) hire, promote, reward, transfer,
15 furlough, lay off, recall, suspend, dis-
16 cipline, or remove public employees;

17 (ii) adjust the grievances of public
18 employees; or

19 (iii) effectively recommend any action
20 described in clause (i) or (ii);

21 (B) devotes a majority of time at work to
22 exercising the authority under subparagraph
23 (A); and

24 (C) is not a law enforcement officer as de-
25 scribed in paragraph (11)(C)(v).

1 (b) FAIR LABOR STANDARDS ACT OF 1938
2 TERMS.—The terms “commerce”, “employ”, “enterprise
3 engaged in commerce”, and “State” have the meanings
4 given such terms in section 3 of the Fair Labor Standards
5 Act of 1938 (29 U.S.C. 203).

6 (c) STATE LAW.—If any term defined in this section
7 has a substantially equivalent meaning to the term (or a
8 substantially equivalent term) under applicable State law
9 on the date of the enactment of this Act, such term (or
10 substantially equivalent term) and meaning under such
11 applicable State law shall apply with respect to the term
12 defined under this Act with respect to such State.

13 **SEC. 3. FEDERAL MINIMUM STANDARDS.**

14 (a) DETERMINATION.—

15 (1) IN GENERAL.—Not later than 180 days
16 after the date of enactment of this Act, the Author-
17 ity shall make a determination for each State as to
18 whether the laws of such State substantially provide
19 for each of the rights and procedures under sub-
20 section (b) and not later than 30 days after the en-
21 actment of this Act, the Authority shall establish
22 procedures for the implementation of this section.

23 (2) CONSIDERATION OF ADDITIONAL OPIN-
24 IONS.—In making the determination under para-
25 graph (1), the Authority shall consider the opinions

1 of affected public employees, supervisory employees,
2 labor organizations, and public employers. In the
3 case where the Authority is notified by an affected
4 public employer and labor organization that both
5 parties agree that the law applicable to such em-
6 ployer and labor organization substantially provides
7 for the minimum standards described in subsection
8 (b), the Authority shall give such agreement weight
9 to the maximum extent practicable in making the
10 Authority's determination under paragraph (1).

11 (3) LIMITED CRITERIA.—In making the deter-
12 mination described in paragraph (1), the Authority
13 may only consider the criteria described in sub-
14 section (b).

15 (4) SUBSEQUENT DETERMINATIONS.—

16 (A) IN GENERAL.—A determination made
17 pursuant to paragraph (1) shall remain in ef-
18 fect unless and until the Authority issues a sub-
19 sequent determination, in accordance with the
20 procedures set forth in subparagraph (B).

21 (B) REQUEST.—A public employee, super-
22 visory employee, public employer, or a labor or-
23 ganization may submit to the Authority a writ-
24 ten request for a subsequent determination with

1 respect to whether a material change of State
2 law has occurred.

3 (C) ISSUANCE.—If satisfied that a mate-
4 rial change in State law has occurred, the Au-
5 thority shall issue a subsequent determination
6 not later than 30 days after receipt of such re-
7 quest.

8 (5) JUDICIAL REVIEW.—Any covered person or
9 public employer aggrieved by a determination of the
10 Authority under this paragraph (1) may, during the
11 60-day period beginning on the date on which the
12 determination was made, petition any United States
13 Court of Appeals in the circuit in which the covered
14 person or public employer resides or transacts busi-
15 ness or in the Court of Appeals for the District of
16 Columbia Circuit, for judicial review. In any judicial
17 review of a determination made by the Authority de-
18 scribed in paragraph (1), the procedures contained
19 in subsections (c) and (d) of section 7123 of title 5,
20 United States Code, shall be followed.

21 (b) FEDERAL MINIMUM STANDARD.—The collective
22 bargaining rights and procedures under this subsection
23 are as follows:

24 (1) A right of public employees and supervisory
25 employees—

1 (A) to self-organization;

2 (B) to form, join, or assist a labor organi-
3 zation or to refrain from any such activity;

4 (C) to bargain collectively through rep-
5 resentatives of their own choosing; and

6 (D) to engage in other concerted activities
7 for the purpose of collective bargaining or other
8 mutual aid (including the filing of joint, class,
9 or collective legal claims) or protection.

10 (2) A requirement for public employers to—

11 (A) recognize the labor organization of its
12 public employees and supervisory employees
13 (freely chosen in an election by a majority of
14 such employees voting in the appropriate unit
15 or chosen by voluntary recognition if that meth-
16 od is permitted under State law) without re-
17 quiring an election to recertify or decertify a
18 labor organization that is already recognized as
19 the representative of such employees unless not
20 less than 30 percent of such employees in the
21 bargaining unit freely sign a petition to decer-
22 tify such labor organization—

23 (i) not earlier than the date that is 1
24 year after the date of the election (or after

1 a voluntary recognition if permitted under
2 State law) of the representative;

3 (ii) not earlier than 1 year after the
4 expiration of a valid collective bargaining
5 agreement;

6 (iii) not during the term of a valid col-
7 lective bargaining agreement (except as
8 permissible under clause (iv)); or

9 (iv) during the 30-day period begin-
10 ning on the date that is 90 days before the
11 end of a valid existing contract;

12 (B) collectively bargain with such recog-
13 nized labor organization; and

14 (C) commit any agreements with such rec-
15 ognized labor organization to writing in a con-
16 tract or memorandum of understanding.

17 (3) An interest impasse resolution mechanism,
18 such as fact-finding, mediation, arbitration, or com-
19 parable procedures that culminate in binding resolu-
20 tion.

21 (4) Payroll deduction of labor organization fees
22 for any duly selected representative of a public em-
23 ployee or supervisory employee pursuant to the
24 terms of an agreement between the labor organiza-
25 tion and such public or supervisory employee, which

1 shall remain in effect until revoked by such employee
2 in accordance with its terms.

3 (5) The prohibition of practices that interfere
4 with, restrain, or coerce public or supervisory em-
5 ployees in the exercise of rights guaranteed in para-
6 graph (1) or regulations issued thereunder.

7 (6) The enforcement of all relevant rights and
8 procedures provided by State law and enumerated in
9 this section.

10 (7) The enforcement of all rights and proce-
11 dures provided by any written contract or memo-
12 randum of understanding between a labor organiza-
13 tion and a public employer, through—

14 (A) a State agency, if the State so chooses;

15 (B) at the election of an aggrieved party,
16 the State courts, if so permitted under State
17 law; or

18 (C) a grievance resolution procedure culmi-
19 nating in binding arbitration negotiated in such
20 contract or memorandum.

21 (c) COMPLIANCE WITH RIGHTS AND PROCE-
22 DURES.—If the Authority determines under subsection (a)
23 that the laws of a State substantially provide each of the
24 rights and procedures described in subsection (b), then

1 subsection (d) shall not apply and this Act shall not pre-
2 empt the laws of such State.

3 (d) FAILURE TO SUBSTANTIALLY PROVIDE.—

4 (1) IN GENERAL.—If the Authority determines
5 under subsection (a) that the laws of a State do not
6 substantially provide for each of the rights and pro-
7 cedures described in subsection (b), then such State
8 shall be subject to the rules and activities of the Au-
9 thority under section 4 beginning on the later of—

10 (A) the date that is 2 years after the date
11 of enactment of this Act;

12 (B) the date that is the last day of the
13 first regular session of the legislature of the
14 State that begins after the date of the enact-
15 ment of this Act; or

16 (C) in the case of a State receiving a sub-
17 sequent determination under subsection (a)(4),
18 the date that is the last day of the first regular
19 session of the legislature of the State that be-
20 gins after the date the Authority made the de-
21 termination.

22 (2) PARTIAL FAILURE.—If the Authority makes
23 a determination that a State does not substantially
24 provide for each of the rights and procedures de-
25 scribed in subsection (b) because the State fails to

1 substantially provide for all of such rights and pro-
2 cedures with respect to any public or supervisory
3 employees, the Authority shall identify—

4 (A) the categories of public or supervisory
5 employees of such State that shall be subject to
6 the rules and activities of the Authority under
7 section 4, pursuant to section 7(b)(3), begin-
8 ning on the applicable date under paragraph
9 (1);

10 (B) the categories of public employees and
11 supervisory employees of such State that shall
12 not be subject to the rules and activities of the
13 Authority under section 4;

14 (C) the categories of rights and procedures
15 described in subsection (b) for which the State
16 does not substantially provide for certain public
17 employees and supervisory employees; and

18 (D) the categories of rights and procedures
19 described in such subsection for which the State
20 substantially provides for all employees.

21 **SEC. 4. MINIMUM STANDARDS ADMINISTERED BY THE FED-**
22 **ERAL LABOR RELATIONS AUTHORITY.**

23 (a) **IN GENERAL.**—Not later than 1 year after the
24 date of enactment of this Act, the Authority shall issue
25 rules and take such actions that the Authority determines

1 appropriate to establish and administer collective bar-
2 gaining rights and procedures that substantially provide
3 for the minimum standards described in section 3(b) for
4 States described in section 3(d).

5 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-
6 THORITY.—In carrying out subsection (a), the Authority
7 shall—

8 (1) provide for the rights and procedures de-
9 scribed in paragraphs (1) through (5) of section
10 3(b);

11 (2) supervise or conduct elections to determine
12 whether a labor organization has been selected as an
13 exclusive representative by a majority of the public
14 employees and supervisory employees voting in such
15 election in an appropriate unit;

16 (3) determine the appropriateness of units for
17 labor organization representation;

18 (4) conduct hearings and resolve complaints
19 concerning violations of this Act or any rule or order
20 issued by the Authority pursuant to this Act;

21 (5) resolve exceptions to the awards of arbitra-
22 tors that violate or exceed the scope of public policy
23 of this Act; and

24 (6) take such other actions as are necessary
25 and appropriate to effectively administer this Act,

1 including issuing subpoenas requiring the attendance
2 and testimony of witnesses and the production of
3 documentary or other evidence from any place in the
4 United States, administering oaths, taking or order-
5 ing the taking of depositions, ordering responses to
6 written interrogatories, and receiving and examining
7 witnesses.

8 (c) ENFORCEMENT.—

9 (1) IN GENERAL.—The Authority may issue an
10 order directing compliance by any covered person or
11 public employer found to be in violation of this sec-
12 tion, and may petition any United States Court of
13 Appeals with jurisdiction over the parties, or the
14 United States Court of Appeals for the District of
15 Columbia Circuit, to enforce any such final orders
16 issued pursuant to this section or pursuant to rules
17 issued under this section, and for appropriate tem-
18 porary relief or a restraining order. Any covered per-
19 son or public employer aggrieved by an order issued
20 by the Authority under this section may, during the
21 60-day period beginning on the date on which the
22 order was issued petition any United States Court of
23 Appeals in the circuit which the covered person or
24 public employer resides or transacts business or in
25 the Court of Appeals for the District of Columbia

1 Circuit, for judicial review. Any petition or appeal
2 under this section shall be conducted in accordance
3 with subsections (c) and (d) of section 7123 of title
4 5, United States Code.

5 (2) PRIVATE RIGHT OF ACTION.—

6 (A) FILING A CIVIL ACTION.—Unless the
7 Authority has filed an order of enforcement as
8 provided in paragraph (1), any party may, after
9 the 180-day period following the filing of a
10 charge with the Authority pursuant to the rules
11 of the Authority under this section, file a civil
12 action against any named State administrator
13 in an appropriate district court of the United
14 States to enjoin such administrator to enforce
15 compliance—

16 (i) with this Act or the rules issued by
17 the Authority under this section; or

18 (ii) to enforce compliance with any
19 order issued by the Authority.

20 (B) TIMING.—Any civil action brought
21 under subparagraph (A) must be brought not
22 later than the earlier of—

23 (i) the date that is 180 days after the
24 expiration of the 180-day period in sub-
25 paragraph (A); or

1 (ii) the date that is 180 days after the
2 date that the Authority dismisses a charge
3 described in subparagraph (A).

4 (C) NOTICE.—The party shall serve notice
5 of the Federal lawsuit to the Authority.

6 (D) JURISDICTION AND ATTORNEYS'
7 FEES.—A district court shall have jurisdiction
8 over the civil action filed under subparagraph
9 (A) without regard to the amount in con-
10 troversy or the citizenship of the parties and
11 may award reasonable attorneys' fees.

12 **SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED**
13 **WHEN EMERGENCY OR PUBLIC SAFETY SERV-**
14 **ICES IMPERILED.**

15 (a) IN GENERAL.—Subject to subsection (b), any em-
16 ployer, emergency services employee, or law enforcement
17 officer subject to the rules and activities of the Authority
18 under section 4 may not engage in a lockout, strike, or
19 any other organized job action of which a reasonably prob-
20 able result is a measurable disruption of the delivery of
21 emergency or public safety services. No labor organization
22 may cause or attempt to cause a violation of this sub-
23 section.

24 (b) NO PREEMPTION.—Nothing in this section shall
25 be construed to preempt any law of any State or political

1 subdivision of any State with respect to strikes by emer-
2 gency services employees or law enforcement officers.

3 **SEC. 6. EXISTING COLLECTIVE BARGAINING UNITS AND**
4 **AGREEMENTS.**

5 The enactment of this Act shall not invalidate any
6 certification, recognition, result of an election, collective
7 bargaining agreement, or memorandum of understanding
8 that—

9 (1) has been issued, approved, or ratified by
10 any public employee relations board or commission,
11 or by any State or political subdivision or an agent
12 or management official of such State or political
13 subdivision; and

14 (2) is in effect on the day before the date of en-
15 actment of this Act.

16 **SEC. 7. EXCEPTIONS.**

17 (a) IN GENERAL.—The Authority shall not make a
18 determination under section 3(a) that the laws of a State
19 do not substantially provide for the rights and procedures
20 under section 3(b) on the basis that relevant State laws—

21 (1) permit a public or supervisory employee to
22 appear on the employee's own behalf with respect to
23 the relationship of the public employee with the pub-
24 lic employer involved;

1 (2) do not cover public or supervisory employees
2 of the State militia or national guard;

3 (3) do not apply to a political subdivision of a
4 State if—

5 (A) such political subdivision has a popu-
6 lation of fewer than 5,000 people or employs
7 fewer than 25 public employees; and

8 (B) the State in which such political sub-
9 division is located notifies the Authority that
10 such subdivision is exempt from such laws be-
11 fore the date on which the Authority makes the
12 determination; or

13 (4) do not require bargaining with respect to
14 pension or retirement income benefits; or

15 (5) prohibit employers and labor organizations
16 from negotiating provisions in a labor agreement
17 that require membership in the labor organization or
18 the payment of fees to the union as a condition of
19 employment.

20 (b) COMPLIANCE.—

21 (1) ACTIONS OF STATES.—Nothing in this Act
22 shall be construed to require a State to rescind or
23 preempt the laws of any political subdivision of the
24 State if such laws substantially provide for the
25 rights and procedures described in section 3(b).

1 (2) ACTIONS OF THE DISTRICT OF COLUM-
2 BIA.—Nothing in this Act or in the rules issued
3 under this Act shall be construed—

4 (A) to require the District of Columbia to
5 rescind—

6 (i) section 501 of the District of Co-
7 lumbia Government Comprehensive Merit
8 Personnel Act of 1978 (1-605.01, D.C. Of-
9 ficial Code), establishing the Public Em-
10 ployee Relations Board of the District of
11 Columbia; or

12 (ii) section 502 of such Act (1-605.02,
13 D.C. Official Code), establishing the power
14 of the Board;

15 (B) to preempt the laws described in sub-
16 paragraph (A); or

17 (C) to limit or alter the powers of the gov-
18 ernment of the District of Columbia pursuant
19 to the District of Columbia Home Rule Act.

20 (3) ACTIONS OF THE AUTHORITY.—Nothing in
21 this Act shall be construed to preempt—

22 (A) the laws of any State or political sub-
23 division of a State that substantially provide for
24 the rights and procedures described in section
25 3(b);

1 (B) the laws of any State or political sub-
2 division of a State that substantially provide for
3 the rights and procedures described in section
4 3(b), solely because such laws provide that a
5 contract or memorandum of understanding be-
6 tween a public employer and a labor organiza-
7 tion must be presented to a legislative body as
8 part of the process for approving such contract
9 or memorandum of understanding; or

10 (C) the laws of any State or political sub-
11 division of a State that permit or require a pub-
12 lic employer to recognize a labor organization
13 on the basis of signed authorizations executed
14 by employees designating the labor organization
15 as their representative.

16 (4) LIMITED ENFORCEMENT POWER.—In the
17 case of a law described in section 3(d)(2), the Au-
18 thority shall only exercise the authority under sec-
19 tion 4 with respect to the categories of public or su-
20 pervisory employees for whom State law does not
21 substantially provide the rights and procedures de-
22 scribed in section 3(b).

23 **SEC. 8. SEVERABILITY.**

24 If any provision of this Act or the application thereof
25 to any person or circumstance is held invalid, the remain-

1 der of this Act, or the application of that provision to per-
2 sons or circumstances other than those as to which it is
3 held invalid, is not affected thereby.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this Act.