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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Service Freedom to Negotiate Act of 2021”.

6 SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:
(1) **APPROPRIATE UNIT.**—The term “appropriate unit” means a group of public employees or a group of supervisory employees appropriate for collective bargaining that share a community of interest, as demonstrated by factors including whether such group—

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

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

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

(3) **COLLECTIVE BARGAINING.**—The term “collective bargaining”, used with respect to public employees, supervisory employees, and public employers, means the performance of the mutual obligation of the representative of a public employer and the exclusive representative of public and supervisory employees in an appropriate unit of the employer to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to wages, hours, and other terms and conditions of employment affecting such employees and to
execute a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession (as described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d))).

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

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

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

(A) a public employee providing out-of-hospital emergency medical care, including an emergency medical technician, paramedic, or first responder; or

(B) a public employee providing other services in response to emergencies that have the potential to cause death or serious bodily injury, including an employee in fire protection activities (as defined in section 3(y) of the Fair
Labor Standards Act of 1938 (29 U.S.C. 203(y)).

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

(8) LAW.—The term “law”, used with respect to a State or a political subdivision thereof, includes the application of the laws of such State or such political subdivision, including any regulations or ordinances issued by such State or such political subdivision.

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

(10) MANAGEMENT EMPLOYEE.—The term “management employee” means an individual employed by a public employer in a position the duties
and responsibilities of which require the individual to formulate or determine the policies of the employer.

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

(A) means an individual, employed by a public employer, who in any workweek is engaged in commerce or is employed in an enterprise engaged in commerce;

(B) includes an individual who is temporarily transferred to a supervisory or management position; and

(C) does not include—

(i) a supervisory employee;

(ii) a management employee;

(iii) a confidential employee;

(iv) an elected official;

(v) a law enforcement officer employed by a public employer as defined in section 2(a)(12)—

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

(II) who is authorized by the agency of the employee to carry firearms; and
(III) whose duties substantially include the engagement in or supervision of the prevention, detection, or investigation of any person for any violation of law: Provided, That a law enforcement officer whose duties substantially include the engagement in or supervision of corrections, probation, parole, or juvenile detention functions shall be a public employee under this Act.

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

(A) employs not less than 1 individual;

(B) is engaged in commerce; and

(C) is either—

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

(ii) any authority, agency, school district, board or other entity controlled and operated by an entity described in clause (i).

(13) SUBSTANTIALLY PROVIDES.—The term “substantially provides”, used with respect to the rights and procedures described in section 3(b),
means providing rights and procedures that are
equivalent to or greater than each of the rights and
procedures described in such section.

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

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

(i) hire, promote, reward, transfer,
furlough, lay off, recall, suspend, disci-
pline, or remove public employees;

(ii) adjust the grievances of public
employees; or

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

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

(C) is not a law enforcement officer as de-
scribed in paragraph (11)(C)(v).
(b) Fair Labor Standards Act of 1938

Terms.—The terms “commerce”, “employ”, “enterprise engaged in commerce”, and “State” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(c) State Law.—If any term defined in this section has a substantially equivalent meaning to the term (or a substantially equivalent term) under applicable State law on the date of the enactment of this Act, such term (or substantially equivalent term) and meaning under such applicable State law shall apply with respect to the term defined under this Act with respect to such State.

Sec. 3. Federal Minimum Standards.

(a) Determination.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination for each State as to whether the laws of such State substantially provide for each of the rights and procedures under subsection (b) and not later than 30 days after the enactment of this Act, the Authority shall establish procedures for the implementation of this section.

(2) Consideration of additional opinions.—In making the determination under paragraph (1), the Authority shall consider the opinions
of affected public employees, supervisory employees, labor organizations, and public employers. In the case where the Authority is notified by an affected public employer and labor organization that both parties agree that the law applicable to such employer and labor organization substantially provides for the minimum standards described in subsection (b), the Authority shall give such agreement weight to the maximum extent practicable in making the Authority’s determination under paragraph (1).

(3) LIMITED CRITERIA.—In making the determination described in paragraph (1), the Authority may only consider the criteria described in subsection (b).

(4) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

(B) REQUEST.—A public employee, supervisory employee, public employer, or a labor organization may submit to the Authority a written request for a subsequent determination with
respect to whether a material change of State law has occurred.

(C) ISSUANCE.—If satisfied that a material change in State law has occurred, the Authority shall issue a subsequent determination not later than 30 days after receipt of such request.

(5) JUDICIAL REVIEW.—Any covered person or public employer aggrieved by a determination of the Authority under this paragraph (1) may, during the 60-day period beginning on the date on which the determination was made, petition any United States Court of Appeals in the circuit in which the covered person or public employer resides or transacts business or in the Court of Appeals for the District of Columbia Circuit, for judicial review. In any judicial review of a determination made by the Authority described in paragraph (1), the procedures contained in subsections (c) and (d) of section 7123 of title 5, United States Code, shall be followed.

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

(1) A right of public employees and supervisory employees—
(A) to self-organization;
(B) to form, join, or assist a labor organization or to refrain from any such activity;
(C) to bargain collectively through representatives of their own choosing; and
(D) to engage in other concerted activities for the purpose of collective bargaining or other mutual aid (including the filing of joint, class, or collective legal claims) or protection.

(2) A requirement for public employers to—

(A) recognize the labor organization of its public employees and supervisory employees (freely chosen in an election by a majority of such employees voting in the appropriate unit or chosen by voluntary recognition if that method is permitted under State law) without requiring an election to recertify or decertify a labor organization that is already recognized as the representative of such employees unless not less than 30 percent of such employees in the bargaining unit freely sign a petition to decertify such labor organization—

(i) not earlier than the date that is 1 year after the date of the election (or after
a voluntary recognition if permitted under State law) of the representative;

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

(iii) not during the term of a valid collective bargaining agreement (except as permissible under clause (iv)); or

(iv) during the 30-day period beginning on the date that is 90 days before the end of a valid existing contract;

(B) collectively bargain with such recognized labor organization; and

(C) commit any agreements with such recognized labor organization to writing in a contract or memorandum of understanding.

(3) An interest impasse resolution mechanism, such as fact-finding, mediation, arbitration, or comparable procedures that culminate in binding resolution.

(4) Payroll deduction of labor organization fees for any duly selected representative of a public employee or supervisory employee pursuant to the terms of an agreement between the labor organization and such public or supervisory employee, which
shall remain in effect until revoked by such employee in accordance with its terms.

(5) The prohibition of practices that interfere with, restrain, or coerce public or supervisory employees in the exercise of rights guaranteed in paragraph (1) or regulations issued thereunder.

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

(7) The enforcement of all rights and procedures provided by any written contract or memorandum of understanding between a labor organization and a public employer, through—

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

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

(C) a grievance resolution procedure culminating in binding arbitration negotiated in such contract or memorandum.

(c) Compliance With Rights and Procedures.—If the Authority determines under subsection (a) that the laws of a State substantially provide each of the rights and procedures described in subsection (b), then
subsection (d) shall not apply and this Act shall not pre-
empt the laws of such State.

(d) Failure to Substantially Provide.—

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

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

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

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

(2) Partial Failure.—If the Authority makes
a determination that a State does not substantially
provide for each of the rights and procedures de-
scribed in subsection (b) because the State fails to
substantially provide for all of such rights and procedures with respect to any public or supervisory employees, the Authority shall identify—

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

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

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

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

SEC. 4. MINIMUM STANDARDS ADMINISTERED BY THE FEDERAL LABOR RELATIONS AUTHORITY.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Authority shall issue rules and take such actions that the Authority determines

appropriate to establish and administer collective bargaining rights and procedures that substantially provide for the minimum standards described in section 3(b) for States described in section 3(d).

(b) ROLE OF THE FEDERAL LABOR RELATIONS AUTHORITY.—In carrying out subsection (a), the Authority shall—

(1) provide for the rights and procedures described in paragraphs (1) through (5) of section 3(b);

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

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

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

(5) resolve exceptions to the awards of arbitrators that violate or exceed the scope of public policy of this Act; and

(6) take such other actions as are necessary and appropriate to effectively administer this Act,
including issuing subpoenas requiring the attendance
and testimony of witnesses and the production of
documentary or other evidence from any place in the
United States, administering oaths, taking or order-
ing the taking of depositions, ordering responses to
written interrogatories, and receiving and examining
witnesses.

(c) ENFORCEMENT.—

(1) IN GENERAL.—The Authority may issue an
order directing compliance by any covered person or
public employer found to be in violation of this sec-
tion, and may petition any United States Court of
Appeals with jurisdiction over the parties, or the
United States Court of Appeals for the District of
Columbia Circuit, to enforce any such final orders
issued pursuant to this section or pursuant to rules
issued under this section, and for appropriate tem-
porary relief or a restraining order. Any covered per-
son or public employer aggrieved by an order issued
by the Authority under this section may, during the
60-day period beginning on the date on which the
order was issued petition any United States Court of
Appeals in the circuit which the covered person or
public employer resides or transacts business or in
the Court of Appeals for the District of Columbia
Circuit, for judicial review. Any petition or appeal under this section shall be conducted in accordance with subsections (c) and (d) of section 7123 of title 5, United States Code.

(2) **PRIVATE RIGHT OF ACTION.**—

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

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

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

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

(i) the date that is 180 days after the expiration of the 180-day period in sub-

paragraph (A); or
(ii) the date that is 180 days after the date that the Authority dismisses a charge described in subparagraph (A).

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

(D) JURISDICTION AND ATTORNEYS’ FEES.—A district court shall have jurisdiction over the civil action filed under subparagraph (A) without regard to the amount in controversy or the citizenship of the parties and may award reasonable attorneys’ fees.

SEC. 5. LOCKOUTS AND EMPLOYEE STRIKES PROHIBITED WHEN EMERGENCY OR PUBLIC SAFETY SERVICES IMPERILED.

(a) IN GENERAL.—Subject to subsection (b), any employer, emergency services employee, or law enforcement officer subject to the rules and activities of the Authority under section 4 may not engage in a lockout, strike, or any other organized job action of which a reasonably probable result is a measurable disruption of the delivery of emergency or public safety services. No labor organization may cause or attempt to cause a violation of this subsection.

(b) NO PREEMPTION.—Nothing in this section shall be construed to preempt any law of any State or political
subdivision of any State with respect to strikes by emergency services employees or law enforcement officers.

SEC. 6. EXISTING COLLECTIVE BARGAINING UNITS AND AGREEMENTS.

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

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

(2) is in effect on the day before the date of enactment of this Act.

SEC. 7. EXCEPTIONS.

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

(1) permit a public or supervisory employee to appear on the employee's own behalf with respect to the relationship of the public employee with the public employer involved;
(2) do not cover public or supervisory employees of the State militia or national guard;

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

(A) such political subdivision has a population of fewer than 5,000 people or employs fewer than 25 public employees; and

(B) the State in which such political subdivision is located notifies the Authority that such subdivision is exempt from such laws before the date on which the Authority makes the determination; or

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

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

(b) COMPLIANCE.—

(1) ACTIONS OF STATES.—Nothing in this Act shall be construed to require a State to rescind or preempt the laws of any political subdivision of the State if such laws substantially provide for the rights and procedures described in section 3(b).
(2) ACTIONS OF THE DISTRICT OF COLUMBIA.—Nothing in this Act or in the rules issued under this Act shall be construed—

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

(i) section 501 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (1-605.01, D.C. Official Code), establishing the Public Employee Relations Board of the District of Columbia; or

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

(B) to preempt the laws described in subparagraph (A); or

(C) to limit or alter the powers of the government of the District of Columbia pursuant to the District of Columbia Home Rule Act.

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

(A) the laws of any State or political subdivision of a State that substantially provide for the rights and procedures described in section 3(b);
(B) the laws of any State or political subdivision of a State that substantially provide for
the rights and procedures described in section 3(b), solely because such laws provide that a
contract or memorandum of understanding between a public employer and a labor organiza-
tion must be presented to a legislative body as part of the process for approving such contract
or memorandum of understanding; or

(C) the laws of any State or political subdivision of a State that permit or require a pub-
lic employer to recognize a labor organization on the basis of signed authorizations executed
by employees designating the labor organization as their representative.

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

SEC. 8. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remain-
der of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

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