IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
2300 Wilson Blvd., Suite 300
Arlington, VA 22201

LOUISIANA ASSOCIATED GENERAL CONTRACTORS,
666 North St.
Baton Rouge, LA 70802

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; FEDERAL ACQUISITION REGULATORY COUNCIL; GENERAL SERVICES ADMINISTRATION; JEFFREY E. KOSES, in his official capacity as Administrator of General Services Administration; OFFICE OF FEDERAL PROCUREMENT POLICY; MATHEW C. BLUM, in his official capacity as Associate Administrator, Office of Federal Procurement Policy; DEPARTMENT OF DEFENSE; JOHN M. TENAGLIA, in his official capacity as Principal Director, Defense Pricing and Contracting, Office of Secretary of Defense; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; KARLA S. JACKSON, in her official capacity as Assistant Administrator for Procurement, National Aeronautics and Space Administration

Defendants,

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. By this action, Plaintiffs The Associated General Contractors of America, Inc. ("AGC of America") and Louisiana Associated General Contractors ("Louisiana AGC") challenge the unlawful Executive Branch actions described below. Defendants are Joseph R. Biden, Jr., in his official capacity as the President of the United States; the Federal Acquisition Regulatory Council (the "FAR Council"); the four federal agencies that are members of the FAR Council; and the senior executives of each of those agencies that serve as members of the FAR Council, each in their official capacities.

NATURE OF THE CASE

2. This case tracks a long line of precedent defining the limits of presidential authority. Consistent with principles announced in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court has recently found various Executive Branch actions to be beyond the scope of a claimed congressional authorization. *E.g., Ala. Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S.Ct. 2485 (2021) (Public Health Service Act (2002)); *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor,* 142 S. Ct. 661 (2022) (Occupational Safety and Health Act); *West Virginia v. EPA,* 142 S.Ct. 2587 (2022) (Environmental Protection Act); and, most recently, *Biden v. Nebraska,* 143 S.Ct. 2355 (2023) (the HEROES Act). Proper judicial scrutiny of Presidential Executive Orders similarly examines whether the President has exceeded his statutory or constitutional prerogatives. *See e.g., Feds for Medical Freedom v. Biden,* 63 F.4th 366 (5th Cir. 2023), *cert. granted, vacated as moot*, No. 23-60, 2023 WL 8531839 (U.S. Dec. 11, 2023), (Exec. Order No. 14043, Federal Employee Vaccine Mandate); *State of Louisiana v. Biden,* 55 F.4th 1017 (5th Cir. 2022) (Exec. Order No. 14042, Federal Contractor Vaccine Mandate); *State of Louisiana v. Becerra,* 629 F.Supp.3d 477 (W.D. La. 2022), *aff'd in part, vacated in part, remanded*

by, No. 22-30748, 2023 WL 8368874 (5th Cir. Aug. 29, 2023) (Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs), 86 Fed. Reg. 68052-01, 45 CFR Part 1302 (2021). *See also* C*ity & Cnty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018) (Executive Order 13768, Enhancing Public Safety in the Interior of the United States).

3. Here, the President has unlawfully exceeded his authority to implement Subtitle I of Title 40 of the United States Code (the "Procurement Act" or "Act"), 40 U.S.C. § 101 *et seq.*, which derives from the Federal Property and Administrative Services Act of 1949, ch. 288, 63 Stat. 377. The Act sets forth a comprehensive set of standards and procedures for the Government's procurement of goods and services, including construction. The President and the FAR Council have wrongly read the Procurement Act to authorize Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, 87 Fed. Reg. 7363 (Feb. 9, 2022) (the "Order"), and the final agency rule necessary to implement that Order. (the "Implementing Regulations" or "Final Rule") (together, the "PLA Mandate"). *See* Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects, 88 Fed. Reg. 88708 (Dec. 22, 2023). It does not.

4. Likewise, the Constitution does not provide the President with the authority to dictate that all of the general contractors and subcontractors (collectively, the "Contractors") engaged in the construction of federal projects costing $35 million or more (the "Large-Scale Federal Projects") to be signatory to a special type of collective bargaining agreement, unique to the construction industry, called a project labor agreement or PLA.

5. In issuing the Order, the President has violated the separation-of-powers principles at the heart of our constitutional system. The enactment of a rule that bars Contractors from competition for Large-Scale Federal Projects unless they sign a collective bargaining agreement is

an inherently legislative function, a function that remains exclusively "with the people's elected representatives" under Article I of the Constitution. *See Nat'l Fed'n of Indep. Bus. v. Dep't of Labor,* 142 S.Ct. 661, 668 (2022) (Gorsuch, J., concurring).

6. By issuing the Final Rule, the FAR Council and its individual members have violated the Administrative Procedure Act ("APA"), 5 U.S.C. §500 *et seq*.

7. Plaintiffs bring this action because the PLA Mandate will disrupt both labor-management relations in the construction industry and the procurement of the federal government's largest and most complex projects. These new measures are already causing Plaintiff's members to incur costs and bear risks that they would not otherwise incur or bear. While these costs are significant and growing, Plaintiffs' members cannot calculate them with the precision required for legal relief.

8. In sum, the PLA Mandate disqualifies "Open Shop Contractors" (which are not signatory to any collective bargaining agreements) from being awarded contracts to construct all or any portion of any Large-Scale Federal Project unless such employers (1) formally recognize or otherwise treat at least several of the construction industry labor unions (the "Unions") as the exclusive representatives of their employees while working on covered projects, (2) enter into collective bargaining agreements with these Unions, and (3) enter into these agreements on terms and conditions that strip such Contractors of any power to negotiate them.

9. These measures similarly disqualify "Signatory Contractors" (which are signatory to collective bargaining agreements with at least one of the Unions) from being awarded such contracts unless such employers (1) waive their rights to apply or enforce their existing agreements with one or more of the Unions, (2) recognize or otherwise deal with not only the Unions signatory to their existing agreements, but also other Unions, including "stranger" Unions with whom they

have no prior relationship, (3) enter into a new and different agreement with the Unions with whom such Contractors already have agreements, and (4) enter into these new agreements on terms and conditions without any meaningful opportunity for negotiation.

10. These unlawful requirements are a radical departure from the federal government's past procurement policy, and an even greater departure from its past practice. In February 2009, President Obama ordered federal procurement agencies to consider project labor agreements on a "project-by-project basis" *See* Exec. Order No. 13502, Use of Project Labor Agreements for Federal Construction Projects, 74 Fed. Reg. 6985 (Feb. 6, 2009). No president has ever gone so far as to mandate PLAs, across the board, for all Large-Scale Federal Projects in all cases, save three vaguely worded exceptions that may be granted only by a handful of senior procurement officials.

11. Since 2009, the nonpartisan civil servants who are tasked with procuring federal construction projects have concluded, in the overwhelming majority of cases, that requiring such agreements pursuant to President Obama's order, would not enhance either economy or efficiency in the procurement of such projects, and they have therefore declined to take that step. In the Preamble to the Final Rule ("Preamble"), the FAR Council concedes this fact:

> According to the data collected by OMB, between the years of 2009 and 2021, there was a total of approximately 2,000 eligible contracts and the requirement for a PLA was used 12 times. Based on the data, on average there are approximately 167 eligible awards annually and approximately one award that includes the PLA requirement."

88 Fed. Reg. at 88723. After reviewing the data that OMB collected from the Department of Defense between 2009 and 2016, Plaintiff AGC of America made essentially the same finding. *See infra* pp. 25-26. In each case, the data indicated that PLAs are likely to enhance economy and efficiency in federal procurement only 0.6% of the time.

12. Yet, in the Preamble, the FAR Council estimates that the percentage of the Large-Scale Federal Projects that the PLA requires to include project labor agreements will climb to somewhere between 50% and 90%. 88 Fed. Reg. at 88724 (estimating only 10% to 50% of covered contracts may be eligible for an exception).

13. The PLA Mandate will give the Unions enormous leverage over access to the multibillion-dollar market for the construction of Large-Scale Federal Projects. To comply with the terms and conditions of any collective bargaining agreement likely to result from the one-sided "bargaining" that the new measures contemplate, Open Shop Contractors will have to make fundamental changes to the way they manage the construction process and, in particular, to the way they assign work. Signatory Contractors will also have to make such changes.

14. The manifest purpose of the PLA Mandate is to advance the President Biden's political agenda on an unrelated policy objective. The PLA Mandate seeks to fulfill his promise to be the "most pro-union President" in American history. *See* Remarks by President Biden in Honor of Labor Unions, THE WHITE HOUSE, (Sept. 9, 2021),. The President, of course, has the right to advance his political agenda. But he may not do so in a manner that both exceeds his statutory authority and violates the Constitution. The stated justification for the PLA Mandate is pretextual. *See Dep't of Com. v. New York,* 139 S. Ct. 2551, 2573-74 (2019).

15. The PLA Mandate lacks any nexus with the substantive provisions of the Procurement Act. The PLA Mandate also rests on the startling proposition that the Procurement Act authorizes the President and the FAR Council to largely displace critical provisions in the National Labor Relations Act ("NLRA"), 29 U.S.C. §§151-169, applicable to the construction industry, to intrude on the primary jurisdiction of the National Labor Relations Board ("NLRB"),

and to disregard core principles of the Labor Management Relations Act ("LMRA") 29 U.S.C. §§185-188.

16. Case law delineating the NLRA's preemption of state and local laws is instructive. *See e.g*. *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Wis. Emp. Relations Comm'n*, 427 U.S. 132, 140 (1976) ("*Machinists*"), *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236, 244 (1959) ("*Garmon*"). As in these cases, the PLA Mandate interferes with several collective bargaining outcomes that Congress intended to leave to the free play of economic forces. *Golden State Transit Co. v. City of Los Angeles,* 493 U.S. 103, 111 (1989 ("The *Machinists* rule creates a free zone from which all regulation, 'whether federal or State,' is excluded") (quoting *Machinists,* 428 U.S. at 153). And, contrary to *Garmon,* the PLA Mandate similarly denigrates the NLRB's primary and exclusive jurisdiction to decide whether contractual restrictions on competition among private companies violate Section 8 of the NLRA. 29 U.S.C. § 158.

17. Section 301 of the LMRA, 29 U.S.C. § 185, reflects a similar congressional articulation of the nation's labor relations policy. It expresses the intent of Congress to broadly prevent any interference with the negotiation or enforcement of collective bargaining agreements by either federal or state governments. Notwithstanding Section 301, the PLA Mandate requires Signatory Contractors to waive their right to apply collective bargaining agreements they have already negotiated with the Unions to all of the projects that will be covered by a PLA. Likewise, Section 14(b) of the LMRA, 29 U.S.C. § 164(b), sets forth the national policy permitting state governments to enact right-to-work laws, a choice made by 28 states, including Louisiana. These laws broadly prohibit collective bargaining agreements that require covered employees to either

join the union or pay union dues. The PLA Mandate threatens to violate Section 14(b) when PLAs are required in federal enclaves, including Barksdale Air Force Base and Fort Polk in Louisiana.

18. These conflicts with the NLRA and the LMRA call for this Court's application of the Major Questions Doctrine. *See, e.g., Biden v. Nebraska*, 143 S.Ct. 2355 (2023). The PLA Mandate drills into the very bedrock of the NLRA, and conflicts with the LMRA, in disregard of the critical role that both have played for over 80 years. If Congress had intended to authorize the President and the FAR Council to take such dramatic action through the Procurement Act, one would reasonably expect Congress to have stated its intention in clear and express terms. It did not.

19. Unless enjoined, the resulting disruption of both labor-management relations in the construction industry and the complex process of constructing Large-Scale Federal Projects will ripple across the country, increasing not only the direct costs of constructing such projects but also the time required to do so.

20. AGC of America and Louisiana AGC (collectively, the "Plaintiffs") seek a declaration that the Order and its Implementing Regulations are null, void, and unenforceable. Among other remedies, Plaintiffs seek a permanent injunction against their enforcement.

JURISDICTION AND VENUE

21. This Court has federal question jurisdiction over this case under 28 U.S.C. § 1331, as this case presents questions arising under federal laws and the U.S. Constitution.

22. When the FAR Council issued the Final Rule, it took final agency action, reviewable under the APA.

23. This Court is authorized to grant the requested declaratory and injunctive relief to review the President's promulgation of Executive Order 14063 and to prevent implementation of

the PLA Mandate under 5 U.S.C. §§ 702 and 706, 28 U.S.C. §§ 2201–02, and principles of non-statutory review under its general equitable powers.

24. The APA has waived the United States' sovereign immunity from this action.

25. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), (c) and (d) because Plaintiffs have members residing in this judicial district and under 28 U.S.C. § 1391(e)(1)(A) and (B) because the Defendants are officers or agencies of the United States, and because decisions applying the PLA Mandate are and will be made in this district. Plaintiff Louisiana AGC has numerous members that maintain their principal place of business in the Lafayette Division of this judicial district. In addition, the actions that this Complaint challenges have been taken, in material part, in this judicial district. For example, RQ Construction, LLC, one of Plaintiffs' members, frequently bids and performs on Large-Scale Federal Projects at Barksdale Air Force Base. The convenience of the parties affected by the Final Rule and the witnesses in this action supports litigating this case in the Lafayette Division of this judicial district.

26. Plaintiffs have standing because the Order and the Final Rule directly affect their members' interests. Many of their members regularly bid for and perform federal construction contracts and subcontracts in this judicial district, specifically including Large-Scale Federal Projects. Protecting their members from the risks, burdens, and harms that the PLA Mandate is already inflicting on these Contractors is well within Plaintiffs' shared mission and purpose. On behalf of its members, AGC of America filed comments on the proposal to what is now the Final Rule, urging the FAR Council not to implement the PLA Mandate for reasons now echoed in this Complaint. No facts specific to any of Plaintiffs' individual members need to be determined, and

nothing otherwise necessitates the participation of individual members as plaintiffs in this action. The case or controversy described in this Complaint is ripe for judicial review.

PARTIES

Plaintiffs

27. Plaintiff AGC of America is a nationwide trade association of construction companies and related firms. It has served the construction industry since 1918, and over time, it has become the recognized leader of the industry in the United States. Today, AGC of America has more than 27,000 members in 89 chapters stretching from Puerto Rico to Hawaii. Among these members are more than 6,500 general contractors and over 9,000 subcontractors. AGC of America has at least one chapter serving every state, Puerto Rico, and Washington, D.C., including a chapter in the state of Louisiana. For both public and private owners of real property, AGC members construct a wide variety of buildings, including offices and apartment buildings, hospitals, barracks, laboratories, schools, shopping centers, factories, and warehouses. They also construct highways, bridges, tunnels, dams, airports, industrial plants, pipelines, power plants, power lines, and both clean water and wastewater facilities.

28. AGC of America is incorporated in the District of Columbia, and its mission is to advocate public policies that will expand and enhance the construction industry, to offer educational programs and materials on topics of interest to its members, and to encourage dialogue not only among construction contractors but also between those companies and related firms, including property owners and design professionals. The association also strives to maintain its members' longstanding commitment to skill, integrity, and responsibility.

29. Across the United States, the members of AGC of America regularly bid for and perform federal construction contracts, including but not limited to contracts to construct Large-

Scale Federal Projects for the U.S. Army Corps of Engineers, the U.S. Navy's Naval Facilities Systems Engineering Command ("NAVFAC") and other federal departments and agencies.

30. Among the members of AGC of America are thousands of Signatory Contractors that have lawfully decided to enter into "pre-hire" or other collective bargaining agreements with one or more of the Unions. Indeed, for generations, many of the association's chapters have facilitated, and continue to facilitate, the multiemployer bargaining that typifies the construction industry.

31. The members of AGC of America also include thousands of Open Shop Contractors that have lawfully refrained from entering into "pre-hire" or other collective bargaining agreements with the Unions. Traditional market forces have led these firms to believe that they can be more competitive if they do not have such agreements.

32. Plaintiff Louisiana AGC is a chartered chapter of AGC of America. It is incorporated in Louisiana and headquartered in Baton Rouge. For nearly 75 years, it has represented the interests of Louisiana's highway and transportation construction Contractors. For nearly 60 years, it has also represented the state's industrial, municipal and utility construction Contractors.

33. Louisiana AGC has nearly 600 members, all of whom are also members of AGC of America. Among the chapter's members are more than 160 Contractors and more than 450 firms in closely allied industries. Collectively, their annual volume of construction exceeds $6 billion. Louisiana AGC has numerous members that maintain their principal place of business in the Lafayette Division of this judicial district.

34. The members of Louisiana AGC regularly bid for and perform federal construction contracts for the U.S. Army Corps of Engineers and NAVFAC, including contracts to construct

Large-Scale Federal Projects. The mission of Louisiana AGC is to advocate for professional and ethical standards that support cost-effective, quality construction. Its prime objective is to cultivate harmonious relations with supervising public authorities. To advance its mission and prime objective, Louisiana AGC offers a broad range of specialized publications. It also hosts education and other events, and provides training, safety and other services.

35. Plaintiffs support free and open competition for publicly funded construction contracts and oppose any federal or other measures that would change the congressionally intended balance of bargaining power between labor and management in the construction industry. To that end, AGC of America opposed the position taken by President George H. W. Bush, in 1992, when he issued Executive Order 12818. That order categorically prohibited federal agencies from requiring PLAs on federal construction projects. AGC of America opposed that prohibition, just as it now opposes the PLA Mandate.

Defendants

36. Defendants are the President of the United States, certain agencies of the United States government, and the officials appointed to head those agencies. The Defendant agencies are the ones that collectively comprise the FAR Council, namely, the Office of Federal Procurement Policy (OFPP,) the Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

37. Plaintiffs sue Defendant Joseph R. Biden, Jr. in his official capacity, as the President of the United States. His official residence is the White House, in Washington, D.C.

38. Defendant FAR Council is an agency of the Executive Branch. Its members are four other agencies or departments of the Executive Branch: OFFP, DOD, GSA and NASA. The members of the FAR Council are all headquartered in Washington, D.C.

39. Defendants OFPP, DOD, GSA, and NASA are the members of the FAR Council and act to implement FAR Council policy and regulations.

40. Plaintiffs also sue in their official capacities Jeffrey J. Koses, Administrator of GSA; Matthew C. Blum, Associate Director, Office of Federal Procurement Policy, OFPP; John M. Tenaglia, Principal Director, Defense Pricing and Contracting, DOD; and Karla S. Jackson, Assistant Administrator for Procurement, NASA.

41. The FAR Council is responsible for "manag[ing], coordinat[ing], control[ing], and monitor[ing] the maintenance of, issuance of, and changes in, the Federal Acquisition Regulation." 41 U.S.C. §§ 1303(b), 1303(d). On December 22, 2023, the FAR Council promulgated the Final Rule implementing Executive Order No. 14063, Use of Project Labor Agreements for Federal Construction Projects. *See generally* 88 Fed. Reg. 88708.

FACTUAL BACKGROUND

The Construction Industry

42. The construction industry is a large and diverse sector of the American economy. Approximately half of the industry is devoted to the construction of single-family homes. Plaintiffs' members account for much of the remainder of the industry, including the construction of apartments, condominiums, and other multifamily structures, and a very broad range of non-residential structures.

43. The contracts for the construction of federal projects, and particularly military facilities, are different from and more burdensome than the contracts that private purchasers of construction services typically require. As a result, many Contractors choose not to pursue federal construction contracts. Some Contractors have invested in the systems and adjusted their operations to the extent necessary to ensure that they can perform in full compliance with federal requirements. Most Contractors have not.

Fundamentals of Collective Bargaining in the Construction Industry

44. Historically, a different union represents the construction workers in each of the many crafts that the construction industry employs. One of the more significant unions is the United Brotherhood of Carpenters and Joiners of America (the "Carpenters"). Fourteen others are affiliated with North America's Building Trade Unions (NABTU), including:

- the International Brotherhood of Electrical Workers (the "Electricians");
- the International Brotherhood of Teamsters (the "Teamsters," primarily representing truck drivers, in the construction industry);
- the International Union of Bricklayers and Allied Craftworkers (the "Bricklayers");
- the International Union of Elevator Constructors (the "Elevator Constructors");
- the International Union of Painters and Allied Trades (the "Painters");
- the Laborers' International Union of North America (the "Laborers");
- the Operative Plasterers' and Cement Masons' International Association (the "Cement Masons");
- the International Association of Sheet Metal, Air, Rail and Transportation Workers (the "Sheet Metal Workers");
- the United Association – Union of Plumbers, Fitters, Welders and Service Techs (the "Plumbers");
- the United Union of Roofers, Waterproofers and Allied Workers (the "Roofers");
- the International Union of Operating Engineers (the "Operating Engineers," primarily representing heavy equipment operators in the construction industry);

- the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (the "Boilermakers");
- the International Association of Heat and Frost Insulators and Allied Workers (the "Insulators"); and
- the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "Ironworkers").

45. Plaintiffs are unaware of any one Contractor that employs craft workers in each and all of the crafts that these Unions collectively represent. Most general contractors employ craft workers in only a few of these categories. General contractors have traditionally bargained and entered into agreements with only one or some of the unions representing what is known in the industry as the "basic trades:" the Carpenters, Laborers, Operating Engineers, and Ironworkers. Subcontractors that perform specialized work, such as electrical firms, may employ craft workers in only one of the craft categories.

46. As they seek to preserve or expand the work available to their members, the Unions frequently come into conflict with each other. These "jurisdictional disputes" between and among the Unions are the product of the frequently murky lines drawn between and among the crafts and the ever-changing nature of the construction process. New construction technologies, and the tasks they entail, may not easily fit into any one craft category.

47. Most of the collective bargaining agreements in the construction industry are area-wide agreements between individual Contractors, or groups of Contractors, and an individual Union. While these agreements may make exceptions, they typically cover all construction projects in the geographic area they delineate. In an effort to avoid jurisdictional disputes, to provide more work for the members of the relevant Union, or to give Signatory Contractors more

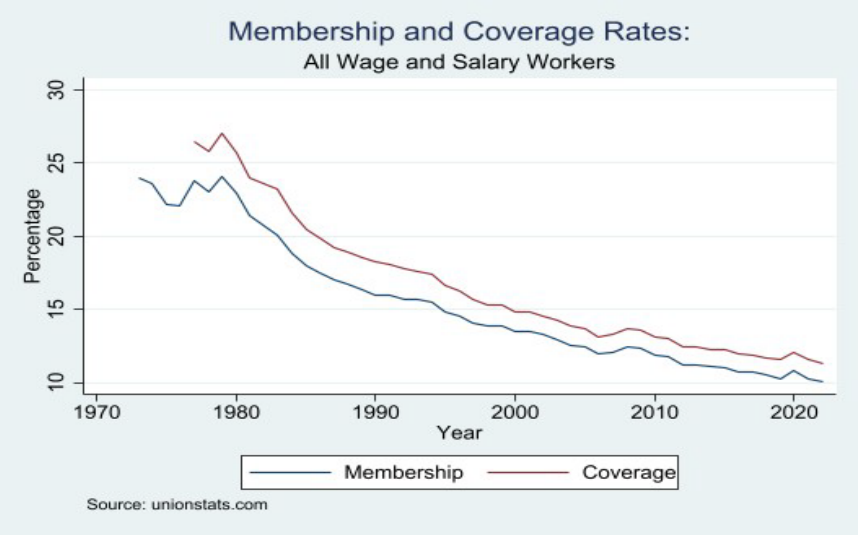
flexibility, these area-wide agreements may also define a union's jurisdiction in ways that differ from historical norms. Across the country, the trend is for these agreements to expand the jurisdiction of the Unions, giving Signatory Contractors more of the flexibility that Open Shop Contractors have always enjoyed.

48. The collective bargaining agreements Contractors will be required to sign under the PLA Mandate are materially different from typical area-wide agreements. In one sense, PLAs are narrower than the area-wide agreements, and in another, they are much broader. PLAs are specific to individual projects, and only apply to those projects. They generally do not apply to any other work. On the other hand, PLAs cover all of the crafts required to construct a project. They are multi-craft agreements between individual Contractors and all the Unions collectively representing the crafts required to perform the work. The number of different Unions that are signatory to a PLA can easily reach double digits. To reconcile the legitimate but competing interests of all the Unions that are parties to a typical PLA, these agreements tend to define each union's jurisdiction in very traditional, if not antiquated, ways that will differ from the area-wide agreements that would otherwise apply to a particular project.

49. Project labor agreements date back to the 1930s and 1940s, when union membership in the construction industry, and union representation, were far higher than they were even 40 years ago. "Historically, the use of PLAs on federal and other publicly funded projects dates back to the construction of the Grand Coulee Dam in Washington state in 1938 and the Shasta Dam in California in 1940." Project Labor Agreements: The Extent of Their Use and Related Information, GAO/GGD-98-82, U.S. GEN. ACCOUNTING OFFICE, at 4 (May 29, 1988). Project labor agreements have been used much less frequently in more recent years, particularly on large-

scale federal procurement projects, a trend reflecting the declining percentage of employees who are represented by labor unions.

50. The Union Membership and Coverage Database is an Internet data resource providing estimates of labor union membership and coverage in the public and private sectors of the economy based on the federal government's Current Population Survey (CPS) and using the same methods as the Bureau of Labor Statistics. The copyright owners of the database are Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University), David Macpherson (Department of Economics, Trinity University), and William Even (Department of Economics, Miami University). Their database confirms Plaintiffs' experience: union membership and coverage in the construction industry have steadily—and dramatically—declined for at least the last 40 years. Indeed, they report that the percentage of union members among all construction workers dropped from 38.1% to 12.6% between 1973 and 2022. *See* Barry T. Hirsch, David A. Macpherson, and William E. Even, *Union Membership and Coverage Database from the CPS ("Unionstats")*, UNIONSTATS, www.unionstats.com (last visited December 4, 2023). The database similarly reveals that the slightly higher percentage of construction workers that the Unions represent dropped from 37.9% in 1977 to 13.4% in 2022. Id. The percentage of union members among all construction craft workers, and the percentage craft workers that the Unions represent, are certainly higher, because not all construction workers are craft workers. The reported figures do, however, paint a reasonably accurate picture of union density in any particular year and an accurate picture of the trends over time. Below is their graphic representation of the trends:



Id.

Experience with Collective Bargaining in the Construction Industry

51. The NLRA is a comprehensive federal statute regulating labor-management relations in the private sector. Among many other things, the statute leaves private employers, including Contractors, free to refrain from bargaining with any union, or entering into any collective bargaining agreement with any union, unless that union can demonstrate that it enjoys the support of a majority of the employees in an appropriate unit. Indeed, for most employers, recognizing, bargaining with, and entering into a collective bargaining agreement with a union that has yet to demonstrate such support would violate the NLRA. *Int'l Ladies' Garment Workers' Union v. NLRB,* 366 U.S. 731 (1961).

52. The NLRA carves out a special exception to these rules for the employers primarily engaged in the construction industry in § 8(f). *See* 29 U.S.C. § 158(f). At their option, such employers can lawfully recognize and bargain with construction labor unions, and enter into so-called "pre-hire" agreements with those Unions, in the absence of any showing of majority support. Section 8(f) does not obligate Contractors to recognize, bargain, or enter into agreements with any Unions that cannot demonstrate majority support. *NLRB v. Local 103, Int'l Assoc. of Bridge,*

Structural & Ornamental Iron Workers, 434 U.S. 335 (1978). The NLRA leaves such employers free to decide whether to take those steps, subject to the other provisions of the NLRA.

53. Under these circumstances, thousands of the members of AGC of America have chosen to refrain from recognizing, bargaining or entering into collective bargaining agreements authorized under NLRA Section 8(f) with any of the Unions. They have chosen, instead, to work on an open-shop basis. They find, for example, that this leaves them free to cross-train their employees in multiple crafts, and to assign them work that cuts across craft lines, without fear of jurisdictional disputes. This business model is particularly common for companies that operate in the 28 states, including Louisiana, that have enacted "right-to-work" laws, which prohibit collective bargaining agreements that either require employees to become members of a labor union or pay union dues.

54. Thousands of other members of the AGC of America have decided to bargain with one or more of the Unions, and to enter into § 8(f) "pre-hire" agreements with those Unions, notwithstanding that they have no legal obligation to do so. Such members find, for example, that such agreements enable them to take advantage of the Unions' excellent apprenticeship programs.

55. Still other AGC members have decided to recognize the Unions as the exclusive representatives of their craft workers in some geographic areas, and to enter into "pre-hire agreements" covering those areas, but to work open shop in other areas.

56. Most Open Shop Contractors have little or no experience with collective bargaining agreements, or the steps necessary to ensure compliance with such agreements. They will find it particularly difficult to determine how to perform their work under a PLA and to comply with its requirements. Given the dramatic impact that the PLA Mandate is certain to have on the balance of bargaining power regarding labor relations, Open Shop Contractors are likely to be required to

make fundamental changes in the way they organize and perform their work, and to search for ways to cover new costs—such as contributions to apprenticeship programs, and to Unions-sponsored health and welfare plans—that they would not normally incur.

57. To the extent they differ from the area-wide agreements that would otherwise apply and extend to Unions with whom Signatory Contractors have no prior relationship, mandatory PLAs will similarly require Signatory Contractors to make fundamental changes to the way they organize and perform their work and to search for ways to cover costs they would not normally incur.

Balance of Bargaining Power in the Construction Industry

58. The federal government is the single largest purchaser of construction services. Annually, the federal government spends more than $35 billion on federal construction projects, USASpending.gov (choose "time" from the tabbed viewing options; then hover over "2018") (last visited December 4, 2023).

59. As a practical matter, the PLA Mandate cedes control over access to a significant portion of that market—for most if not all of the Large-Scale Federal Projects—to the Unions. In both the Order and the Final Rule, and the Preamble to the latter, the President and the FAR Council studiously omit any discussion of the nature or extent of the Unions' legal or other obligations to negotiate "pre-hire" agreements with potential bidders, or their subcontractors. The reasons for this omission are no doubt strategic. The truth is that the Unions, as with construction industry employers, have no legal or other obligation to negotiate or enter into any "pre-hire" agreement with any potential bidder, or with any one or more of the subcontractors that a successful bidder would require to perform the work. 29 U.S.C. § 158(f). Even where a Union chooses to offer a "pre-hire" agreement to a Contractor, the union has no obligation to negotiate with that firm, in good faith or otherwise. *See John Dekelwa & Sons, Inc.,* 282 N.L.R.B. 1375

(1987), *enforced sub nom. Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 3 v. NLRB*, 843 F.2d 770 (3d Cir.), *cert. denied*, 488 U.S. 889 (1988).

60. Acting in the lawful interests of their members, the Unions have every incentive to exercise their new power and no incentive to refrain from doing so. The PLA Mandate puts the Unions in a position to lawfully demand, for example, that agreements include exclusive hiring hall or other provisions ensuring that the Unions' members get the work, even if the successful bidder for the work, and all of its subcontractors, are Open Shop Contractors, each with their own existing workforce of skilled craft workers. The Unions have no obligation or incentive to even consider the resulting impact that such provisions would have on the craft workers that the successful bidder and its subcontractors already employ.

61. The required "negotiations" between the Unions and the Contractors contemplated by the PLA Mandate will make a mockery of the concept. They will last only as long as the Unions require to say "take it or leave it." The Unions have no economic or other interest in whether any one Contractor qualifies for a contract or subcontract to construct all or part of any Large-Scale Federal Project.

62. Among the other terms and conditions that the PLA Mandate empowers the Unions to demand, and leave potential bidders powerless to resist, are provisions addressing the following:

- Provisions requiring workers, including workers employed by Open Shop Contractors, to pay union dues or agency fees;
- Provisions that extend *de facto* representational rights to the Unions for purposes of addressing questions regarding the interpretation of various provisions of the PLA, including PLAs to which Open Shop Contractors are required to sign;

- Provisions that define each Union's jurisdiction in very traditional if not antiquated ways that make it far more difficult for even Signatory Contractors to avoid the disruptions that result from jurisdictional disputes;
- Provisions that define seniority and its application for matters such as job bidding and work assignment in ways that materially differ from most existing collective bargaining agreements;
- provisions requiring arbitration or other private dispute resolution procedures for resolving jurisdictional disputes, in lieu of the statutory procedures that Congress set forth in § 10(k) of the NLRA, 29 U.S.C. § 160(k);
- staffing requirements that exceed actual needs;
- provisions that would extend the obligations of the PLA to other so-called "spillover" work that would be undertaken by Signatory Contractors;
- provisions requiring all covered Contractors to contribute to the multiemployer health and welfare funds, and the pension funds, that the Unions favor, even if the Contractors are already paying health insurance companies and other entities to provide similar or the same fringe benefits to their employees; and
- wage rates that exceed the prevailing rates otherwise required by the Davis-Bacon Act. 40 U.S.C. § 120 *et seq.*

63. Open Shop Contractors operate their business without being burdened by these, and other provisions, that inevitably increase costs. Signatory Contractors similarly have negotiated collective bargaining agreements that provide them with considerable flexibility with respect to these topics.

64. The PLA Mandate requires that all PLAs include a wall-to-wall subcontracting clause that prohibits the general contractor and all of its subcontractors from subcontracting any work to any firm that is not signatory to the same PLA. While such a clause would be enormously burdensome, and arguably violate the "hot cargo agreement" prohibition in Section§ 8(e) of the NLRA, 29 U.S.C. § 158(e), Contractors would have no power to negotiate it out of any required agreement. The PLA Mandate would thus displace the NLRB's primary jurisdiction to adjudicate unfair labor practices and would override the free play of economic forces that Congress intended to govern the outcome of the collective bargaining process.

65. The PLA Mandate unlawfully delegates improper control of federal procurement policy to the Unions without insuring proper supervision and meaningful oversight by the FAR Council or any other federal agency. This is in violation of the private non-delegation doctrine. Because not even Congress has authority under the Constitution to do that, *see National Horseman's Benevolent & Protective Ass'n v. Black,* 53 F.4th 869 (5th Cir. 2022), it follows *a fortiori* that the Executive Branch cannot do so, *i.e.,* neither the President by executive order nor Executive Branch agencies by implementing regulations can "execute" the law in a manner that Congress could not constitutionally delegate in the first instance.

Economy and Efficiency in the Procurement of Federal Construction Projects

66. The PLA Mandate will not promote either economy or efficiency in the procurement of Large-Scale Federal Projects. To the contrary, it will decrease competition for Large-Scale Federal Projects and increase the cost of constructing them.

67. Unless enjoined, the PLA Mandate Order will discourage general contractors from pursuing prime contracts for the construction of covered projects and reduce the number of qualified general contractors that compete for such contracts.

68. Unless enjoined, the PLA Mandate will discourage subcontractors from submitting the bids that general contractors require to price and pursue contracts for the construction of Large-Scale Federal Projects.

69. Many Contractors will choose not to participate in bidding for Large-Scale Federal Projects. In response to a survey that AGC of America conducted in 2022, 73% of the Contractors among the association's members stated that they were "not interested" in bidding on federal construction projects that required them to be signatory to project labor agreements. *See* 2022 PLA Survey Results, The ASSOCIATED GEN. CONTRACTORS ORG., (last visited December 4, 2023).

70. Many of the general contractors that bid for Large-Scale Federal Projects are heavily dependent on specific subcontractors with whom they have worked in the past. To the extent that the PLA Mandate causes these subcontractors to withdraw from the market for such projects, these general contractors will have to depend on a different and unfamiliar set of subcontractors with whom they have little or no prior experience, who will necessarily employ individuals with whom the general contractors have no familiarity. In and of itself, this will create enormous but unquantifiable risks of loss for the general contractors that continue to compete for such projects. Even if they continue to compete for such work, these general contractors are likely to be more selective, and to compete for fewer projects.

71. Unless enjoined, the PLA Mandate will also discourage many craft workers from working for prime contractors or subcontractors involved in the construction of Large-Scale Federal Projects. This will also make it riskier for Contractors to pursue such work and will increase the costs they will need to recover in order to make a profit.

72. The PLA Mandate will have a particularly detrimental effect on the construction of Large-Scale Federal Projects on the many military bases and other federal facilities located in rural

areas. Most of the subcontractors in those rural areas are Open Shop and few of them are willing to sign collective bargaining agreements of any kind, let alone an agreement imposed on them as a 'take it or leave it' mandate. To make matters worse, few of the craft workers in those areas are unions members or otherwise interested in union representation.

73. President Obama issued Executive Order 13502, entitled "Use of Project Labor Agreements for Federal Construction Projects" (the "Obama PLA Order"), on February 6, 2009, 74 Fed. Reg. 6985 (Feb. 6, 2009). That executive order declared that "it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements" in connection with construction projects costing $25 million or more. Obama PLA Order §§ 1(b) and 2(c). It also purported to grant the authority to require such agreements on a "project-by-project basis" to the federal officials on the front lines of the procurement of federal construction projects. Obama PLA Order, §§ 2(c) and 3(a).

74. The Obama PLA Order also directed the FAR Council to issue such regulations as were necessary to implement its terms and conditions. Obama PLA Order § 6. The Far Council issued those regulations on April 13, 2010. Federal Acquisition Regulation; FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects, 75 Fed. Reg. 19168 (Apr. 13, 2010),

75. The Obama PLA Order and its implementing regulations were left untouched during the Trump Administration and remained effective until January 22, 2024—the effective date of the Final Rule implementing Executive Order No. 14063. Order § 10; 88 Fed. Reg. 88708.

76. Pursuant to the Obama PLA Order, nonpartisan civil servants have assessed the merits of imposing project labor agreements on thousands federal construction projects. *See* Obama PLA Order §2(c). In the vast majority of such occasions, these civil servants concluded

that requiring such a collective bargaining agreement would not be helpful. Data collected by the Office of Management and Budget ("OMB"), recited in the Final Rule, reveals these officials decided to require agreements for only 12 of approximately 2,000 construction projects eligible for that requirement, or for only one of the approximately 167 of the construction projects eligible for the requirement each year. *See* 88 Fed. Reg. at 88723.

77. AGC of America has independently reviewed a total of 27 reports that DOD submitted to OMB on DOD projects costing $25 million or more and awarded between the fourth quarter of 2009 and the fourth quarter of 2016. *See* New Data Weighs on Debate Over Project Labor Agreements, THE ASSOCIATED GEN. CONTRACTORS ORG., at 2 (Feb. 2022). These reports reveal that DOD had a total of 610 construction projects that were eligible for project labor agreements over this seven-year period of time. DOD decided not to require such a collective bargaining agreement for 293 of these 610 projects for reasons unrelated to either economy or efficiency in federal procurement, and more specifically because (1) the FAR Council had yet to issue regulations implementing the Obama PLA Order, (2) DOD had to issue guidance on the Obama PLA Order or its implementing regulations, (3) the federal contract was either a Multiple Award Task Order Contract ("MATOC") or an Indefinite Duration and Indefinite Quality ("IDIQ") contract, or (4) DOD had inadvertently neglected to consider such an agreement. *Id.* More importantly, the reports also reveal that DOD decided to require such an agreement for only 2 of the 317 other projects costing $25 million or more and awarded over this period of time. *Id.* In other words, when encouraged to consider project labor agreements, but otherwise left to exercise its own discretion, DOD found that such agreements were in the federal government's interest only 0.6% of the time. *Id.*

78. The Order recognizes the anticompetitive effects that the required use of PLAs may have on procurement of federal construction projects. *See* Order § 5. Nevertheless, in the Final Rule, the FAR Council acknowledged that the Order will ultimately require 50% to 90% of all Large-Scale Federal Projects to be constructed under collective bargaining agreements. *See* 88 Fed. Reg. at 88724. Given the limited number of exceptions, the limited number of federal officials authorized to grant exceptions, and the great effort required to justify exceptions, the PLA Mandate is likely to require at least that many projects to be constructed under PLAs.

79. The Order states that "[c]onstruction employers typically do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed." Order § 1. Plaintiffs' experience conflicts with that unsupported assertion (which is repeated, again without support, in the Final Rule, 88 Fed. Reg. at 88711). In Plaintiffs' experience, many if not most of today's Contractors have a large permanent workforce that they migrate from one project to the next and supplement, when necessary, either by hiring more craft workers or by subcontracting work that they would otherwise self-perform. For that reason, today's Contractors do not find it particularly difficult to predict their labor costs. They have data on their craft workers' past performance and can accurately calculate their craft workers' future productivity.

80. In contrast, the PLA Mandate will make it all but impossible for Contractors to estimate their future labor costs with any degree of accuracy. The project labor agreements mandated by the Order will empower the Unions to require Contractors to replace many, and perhaps all, of their current craft workers with Union members with whom the Contractors are unfamiliar because of the union hiring hall preference provisions contained in most project labor agreements. Lacking experience with or data on the performance and skill level of those

individuals, Contractors will have no financial basis on which to make accurate estimates regarding the cost of the labor they require to construct a Large-Scale Federal Project.

81. A project labor agreement is not necessary to mitigate the impact of a labor dispute between one or more of the Unions and any one of the many Contractors required to construct a Large-Scale Federal Project. For that purpose, settled principles of federal labor law, including the "reserved gate" doctrine, have been available and widely used for decades. *Local 761, Int'l Union of Elec., Radio & Machine Workers v. NLRB,* 366 U.S. 667 (1961). The parties to any dispute can also turn to any dispute resolution procedures included in their collective bargaining agreements, or to pursue the statutory procedure for resolving jurisdictional disputes at the NLRB provided by § 10(k) of the NLRA. 29 U.S.C. § 160(k).

82. Where all of the Contractors engaged in the construction of a Large-Scale Federal Project are Open Shop, a labor dispute resulting in a strike or other work stoppage is an extremely remote possibility, and a project labor agreement is not needed to prevent such a project from being delayed by a strike or other work stoppages.

Immediate and Irreparable Harm

83. The PLA Mandate will take effect in a matter of days, *see* 88 Fed. Reg. at 88708 (prescribing an effective date of January 22, 2024), and will affect all subsequent solicitations for Contractors to construct Large-Scale Federal Projects. Within days, the Final Rule will require all bidders for such projects, and all of their subcontractors, to be signatory to project labor agreements, subject to just three exceptions that even the FAR Council expects to apply as little as 10% of the time. Immediately, the PLA Mandate effectively strips all of these Contractors of the power to negotiate the terms and conditions of their collective bargaining agreements.

84. Already the PLA Mandate is causing immediate and irreparable harm to the many federal Contractors among Plaintiffs' members. At least some of these members have already

begun the complex process of deciding whether they will continue to compete for Large-Scale Federal Projects or abandon that market. Among other things, they have to assess whether they can afford to write off the great expense that they have incurred in procuring the information technology systems they need to meet the many contractual requirements unique to federal projects, and in both developing and implementing the protocols needed to fulfill their federal contracts.

85. Some of the costly requirements and certifications frequently found in federal construction contracts but rarely found in contracts with private project owners include the following illustrative requirements from the government's Federal Acquisition Regulation ("FAR"). *See generally* 48 C.F.R. Parts 52, 252:

- 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless:

  (A) The acquisition is to be made under the simplified acquisition procedures in part 13;
  (B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
  (C) The solicitation is for utility services for which rates are set by law or regulation.

- 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed $150,000.

- 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation. This provision applies to all solicitations.

- 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that:
  (A) Are not set aside for small business concerns;
  (B) Exceed the simplified acquisition threshold; and
  (C) Are for contracts that will be performed in the United States or its outlying areas.

- 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations-Representation.

- 52.209-5, Certification Regarding Responsibility Matters. This applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

- 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This applies to all solicitations.

- 52.214-14, Place of Performance-Sealed Bidding. This applies to invitations for bids except those in which the place of performance is specified by the Government.

- 52.215-6, Place of Performance. This applies to solicitations unless the place of performance is specified by the Government.

- 52.219-1, Small Business Program Representations (Basic & Alternate I). This applies to solicitations when the contract will be performed in the United States or its outlying areas.
  (A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.
  (B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

- 52.219-2, Equal Low Bids. This applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

- 52.222-22, Previous Contracts and Compliance Reports. This applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

- 52.222-25, Affirmative Action Compliance. This applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

- 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

- 52.225-2, Buy American Certificate. This applies to solicitations containing the clause at 52.225-1.

- 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This applies to solicitations containing the clause at 52.225-3.
  (A) If the acquisition value is less than $25,000, the basic provision applies.
  (B) If the acquisition value is $25,000 or more but is less than $50,000, the provision with its Alternate I applies.
  (C) If the acquisition value is $50,000 or more but is less than $80,317, the provision with its Alternate II applies.
  (D) If the acquisition value is $80,317 or more but is less than $100,000, the provision with its Alternate III applies.

- 52.225-6, Trade Agreements Certificate. This applies to solicitations containing the clause at 52.225-5.

- 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. This applies to all solicitations and contracts issued by the U.S. Department of Defense, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of Commercially Available Off-the-Shelf ("COTS") items.

86. If experienced Contractors decide to abandon the federal market, they also have to begin incurring the great cost of developing bids and proposals for the private, state, and local work they will need to obtain in order to maintain their backlogs and continue to provide their employees with steady employment. Changing their business strategies, in and of itself, will require them to incur significant costs that they can neither calculate with any precision nor recover in the course of business.

87. If the federal Contractors among Plaintiffs' members decide to continue competing for Large-Scale Federal Projects, they will have to make equally difficult and expensive changes to their operations. They will have to determine whether and how they can retain craft workers who object to union representation. Knowing that they will struggle to retain all such workers, these members will also have to determine whether and how they can hire replacements. General contractors will also have to determine where and how they will find the subcontractors they will need to construct Large-Scale Federal Projects, given that many subcontractors, particularly in rural areas, have already indicated that they will not enter into collective bargaining agreements. The required changes will be a significant culture shock for Open Shop Contractors with no experience in having to operate in an environment in which most operating decisions are subject to input and second-guessing by Union representatives.

88. The Contractors that decide to continue competing for Large-Scale Federal Contracts will also have to determine how they will comply with the collective bargaining agreements required by the PLA Mandate. While Open Shop Contractors are likely to incur higher costs, both Open Shop and Signatory Contractors will have to incur the significant but

unquantifiable and unrecoverable costs of making significant changes to the ways they seek and perform such work.

89. The PLA Mandate will fundamentally change the market for Large-Scale Federal Projects. In the process, the PLA Mandate will make it impossible to determine which Contractors would have won which contracts and subcontracts in the absence of those requirements. Nor will it be possible to determine the profit that Contractors would have earned but for the new requirements.

90. The PLA Mandate will cause significant negative effects on all Contractors' future performance and productivity, including the time they require to complete projects and the quality of their work. Given the dramatic impact that the PLA Mandate will have on the balance of the bargaining power in the construction industry, the PLA Mandate is likely to include numerous provisions that increase the direct and indirect cost of constructing Large-Scale Federal Projects. Just one such example would be provisions requiring all covered Contractors to contribute to the multiemployer health and welfare funds, and the pension funds, that the Unions favor and insist on—even if the Contractors are already paying health insurance companies and other entities to provide similar fringe benefits to their employees. To the extent that the required agreements permit Open Shop Contractors to use their current craft workers, and those workers will agree to union representation, Open Shop Contractors that routinely provide fringe benefits to their employees will then find it necessary to make double payments for fringe benefits. Such Contractors will have to continue making payments to the providers of their existing employee benefits and make payments to the multiemployer benefit funds. It will not matter that, even on Large-Scale Federal Projects, most Open Shop Contractors are unlikely to be working on the

project long enough to qualify their craft workers to receive the benefits provided by multiemployer pension plans.

91. The dramatic impact the PLA Mandate will have on the balance of the bargaining power in the construction industry will cause other types of irreparable harm, including labor shortages. The results of the survey that AGC of America conducted in 2022 illustrate the problem. Roughly two-thirds of the respondents to that survey felt that a government mandate for project labor agreements would make it harder for them to find the workers they needed to compete for future work, compared to only 10% who felt that such a mandate would make the process easier. *See* AGC's PLA Survey– Summary Statistics, THE ASSOCIATED GEN. CONTRACTORS ORG, (last visited December 4, 2023). In response to the same survey, 83% of the Contractors that sometimes or always work under collective bargaining agreements stated that such a mandate would deprive them of the labor supply they needed to guarantee the on-time and on-budget delivery of the projects they construct under such agreements, explaining that the labor unions are facing their own shortages. *See* 2022 PLA Survey Results, The ASSOCIATED GEN. CONTRACTORS ORG., (last visited December 4, 2023).

92. Union workers are particularly scarce in remote areas of the country where highly secure and sensitive government facilities are often built. Indeed, in rural areas of Louisiana, specifically including areas where Large-Scale Federal Projects are currently being constructed, including at Barksdale Air Force base, union density is extremely low, particularly in the construction industry. Recruiting union workers to work on such projects is extremely difficult and time-consuming.

93. Congress has clearly stated that one of the unique policy objectives of the federal procurement system is to provide a significant number of business opportunities for small

businesses, including women-owned small businesses, small disadvantaged businesses, HUBZone small businesses, and service-disabled veteran-owned small businesses. S*ee*, *e.g.*, 15 U.S.C. §644(e)(1); FAR §19.202-1. In an effort to meet this objective, federal procurement agencies routinely impose goals for such firms' participation in Large-Scale Federal Projects. [48 C.F.R. § 19.702]. Indeed, if a prime contractor fails to meet its goals for such participation, it may have to pay liquidated damages. *See, e.g.*, 15 U.S.C. § 637. Unless enjoined, the PLA Mandate will cause irreparable harm to such firms by impeding Congress's objective of providing them with a significant number of business opportunities, as such firms rarely possess the knowledge, skills, abilities, and systems that Contractors require to navigate and comply with project labor agreements.

Entitlement to Injunctive Relief

94. The deadlines imposed by the PLA Mandate will have widespread and permanent effects that no legal remedy can redress, such that the only available remedy to redress the harms is injunctive relief.

95. Balancing the hardships to Plaintiffs and their members relative to the hardships to Defendants, equitable relief is warranted.

96. Specifically, absent an injunction, members of Plaintiff associations will be jeopardized as a result of Defendants' adoption and implementation of the unconstitutional, illegal, and logistically unworkable PLA Mandate.

97. On the other hand, the hardship of an injunction to Defendants is minimal; they simply must abide by the Constitution and the laws of the United States. As expressed in Executive Order 13502, issued by President Obama 14 years ago, the preference for requiring PLAs in appropriate circumstances will remain in place, and federal procurement agencies and contractors

bidding on covered federal projects will still need to consider whether or a not a PLA should be used on the project.

98. Injunctive relief would not disserve the public interest, because the public always has an interest in seeing that the executive branch's actions are constitutional.

LEGAL BACKGROUND

Executive Order No. 14063

99. On February 4, 2022, President Biden issued Executive Order No. 14063, "Use of Project Labor Agreements for Federal Construction Projects." 87 Fed. Reg. 7363 (Feb. 9, 2022).

100. With the exceptions noted below, the Order requires all of the Contractors working on Large-Scale Federal Projects to "negotiate or become a party to" one of these collective bargaining agreements. Whenever "awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract," the Order provides that "agencies shall require every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor unions." 87 Fed. Reg. at 7364. Use of Project Labor Agreements for Federal Construction Projects, Exec. Order No. 14,063, 87 Fed. Reg. 7363 (Feb. 9, 2022), This requirement is restated in the Final Rule. 88 Fed. Reg. at 88727 (to be codified at 48 C.F.R. § 22.503(b)).

101. The Order defines a "[l]arge-scale construction project" as a "Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is $35 million or more." Order § 2. In the Final Rule, the FAR Council adopts this definition verbatim, and goes on to explain that the requirements of the Order will apply to virtually all contracts for such projects, including individual orders against IDIQ contracts. 88 Fed. Reg. at 88727.

102. The Order also provides that all of the required agreements must include wall-to-wall subcontracting clauses that effectively prevent the successful bidder and its subcontractors from subcontracting any work to any firms that are not willing to sign the same agreement. Indeed, the Order expressly provides that the required agreements must "[b]ind all contractors and subcontractors on the construction project." 87 Fed. Reg. at 7364; *see also* 88 Fed. Reg. at 88727.

103. The Order requires PLAs to include provisions that "guarantee[] against strikes, lockouts and similar job disruptions," provisions that prescribe "effective, prompt, and mutually binding procedures for resolving labor disputes" and "other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health." *Id.*

104. The Order provides that it shall apply to all solicitations for contracts to construct Large-Scale Federal Projects on or after January 22, 2024, the effective date of the Final Rule. 88 Fed. Reg. at 88708.

105. The Order does carve out exceptions to the mandate. But it limits the number of exceptions to three, and it declares that an exception will apply only where a "senior official within an agency . . . provide[s] a specific written explanation of why" an exception applies. In full, the relevant section of the Order states:

> Exceptions Authorized by Agencies. A senior official within an agency may grant an exception . . . for a particular contract by, no later than the solicitation date, providing a specific written explanation of why at least one of the following circumstances exists with respect to that contract:
>
> (a) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:
> (i) The project is of short duration and lacks operational complexity;
> (ii) The project will involve only one craft or trade;

(iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;
(iv) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or
(v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.

(b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.

(c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

87 Fed. Reg. at 7364.

Regulations Implementing Executive Order 14063

106. The Final Rule implements Executive Order 14063 as directed, requiring PLAs for Large-Scale Federal Projects, including IDIQ contract orders at or above $35 million, and allowing procurement agencies to consider requiring PLAs for smaller projects where warranted by certain factors prescribed in the rule. 88 Fed. Reg. at 88727 (to be codified at 48 C.F.R. § 22.503(b)). The Final Rule is scheduled to take effect on January 22, 2024.

The Procurement Act

107. In great detail, the Procurement Act prescribes a government-wide system for the procurement of the goods and services, including construction. The Act "includes subtitle I of Title 40 (over one hundred code sections)," and by reference, "much of division C of subtitle I of Title 41 (over seventy more)." *Georgia v. Bide*n, 46 F.4th 1283, 1293 (11th Cir. 2022). "That set of provisions is lengthy, and in combination quite specific in setting out the procurement-related authority of the GSA Administrator, executive agencies, and other officials." *Id*.

108. The Procurement Act authorizes the President to implement this government-wide system. 40 U.S.C. §121. The Act does not, however, authorize the President to modify or amend the system, or to append any new and unrelated set of authorities or requirements to the many that Congress included in the Act. In the one section that delegates legislative authority to the President, the Procurement Act states:

> The President may prescribe policies and directives that the President considers necessary to carry out this subtitle. The policies must be consistent with this subtitle.

Id. (emphasis added).

109. Not one of the many provisions of "this subtitle" makes any reference to the subject matter of the PLA Mandate. Nowhere does the Procurement Act refer to labor-management relations, the collective bargaining process, or collective bargaining agreements (much less pre-hire agreements, or project labor agreements). Nor does it mention any one or more of the problems that the Order purports to address, such as (1) the labor supply, (2) strikes, lockouts or other labor disruptions, or work stoppages, (3) jurisdictional or other labor disputes, or (4) the terms or conditions of employment in the private sector. The Procurement Act establishes no standards or procedures for dealing with such things. Nor does it vest any authority for doing so in any Executive Branch agency or official.

110. In addition to limiting the scope of the legislative authority it delegates to the President, the Procurement Act provides that the President must exercise his delegated authority in a manner that promotes economy and efficiency in federal procurement. Thus, the Procurement Act declares that its very purpose of the statute is "to provide the Federal Government with an economical and efficient system" for activities that include "[p]rocuring and supplying property and nonpersonal services." 40 U.S.C. § 101.

The Competition in Contracting Act

111. In 1984, Congress enacted the Competition in Contracting Act ("CICA"), codifying a long-standing practice of obtaining maximum competition in the federal marketplace. *See* 41 U.S.C. § 3301 *et seq.*

112. CICA amended the Procurement Act to require, with limited exception, that federal agencies obtain full and open competition through the use of competitive procedures when procuring property or services. 41 U.S.C. § 3301.

113. Pursuant to this Section 3301, federal procuring agencies soliciting property or services must specify their needs in a manner designed to maximize competition. This provision requires the federal agencies not only permit all who are responsible to compete, but also allows the agencies to "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law." 41 U.S.C. §§ 107, 3306(a)(2)(B).

114. Because unnecessary provisions unduly restrict competition, federal agency solicitations that contain such provisions are unlawful and may be set aside by a reviewing court or agency. *See, e.g.*, *Am. Safety Council, Inc. v. United States*, 122 Fed. Cl. 426, 435-38 (2015), Booz Allen Hamilton, Inc., B-418449, 2020 CPD ¶ 178 (May 18, 2020).

The National Labor Relations Act

115. Congress enacted the NLRA in 1935 to bring uniformity to labor-management relations in the private sector, reduce industrial strife, and protect the rights of private sector employees to join a union, to bargain collectively through a union of their own choosing, and engage in other forms of protected, concerted activity. 29 U.S.C. § 157.

116. Congress amended the NLRA in 1947, via the Taft-Hartley Act, and again in 1959 via the Landrum Griffin Act. In the Taft-Hartley Act amendments, Section 7 was amended to include explicitly the right of employees to refrain from joining a union or engaging in protected

activities. The Taft-Hartley Act amendments also included new provisions outlawing various types of labor union conduct constituting a "secondary boycott." 29 U.S.C. § 158(b)(4).

117. The NLRA renders it unlawful for the vast majority of private employers to recognize or otherwise treat a labor union as the exclusive bargaining representative of any unit of employees, or to enter into a collective bargaining agreement that fixes the terms and conditions of employment for the employees in any such unit, unless and until that union can demonstrate that it enjoys the support of a majority of the employees in that unit. 29 U.S.C. §§ 159(a), 158(a)(2). *Int'l Ladies' Garment Workers' Union v. NLRB,* 366 U.S. 731 (1961).

118. In Section 8(f), the NLRA carves out an exception to this general rule for employers engaged primarily in the building and construction industry, allowing such employers to enter into "pre-hire" agreements with one or more of the Unions even in the absence of any showing of majority support. 29 U.S.C. § 158(f). The statute does not, however, go so far as to *require* such employers to enter into such "pre-hire" agreements. Indeed, the NLRA leaves such employers equally free to refrain from entering into such agreements. Whether such employers seek or enter into such agreements is a matter that Congress intended to leave to the free play of economic forces, subject only to the requirements of the NLRA itself. *See, e.g.*, *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.,* 475 U.S. 282 (1986); *Machinists, supra.*

119. In situations in which the parties decide not to enter into a "pre-hire" agreement, construction industry unions are treated like all other labor organizations. The NLRA empowers unions to compel collective bargaining, but only by demonstrating that they enjoy the support of a majority of the employees in appropriate units. *See e.g., Linden Lumber Div. v. NLRB,* 419 U.S. 301 (1974).

120. Even where labor unions demonstrate majority support in an appropriate unit, the NLRA requires employers, including Contractors, only to engage in good-faith bargaining. *See National Licorice Co., v. NLRB*, 309 U.S. 350 (1940). The statute does not, under any circumstances, require the employers in any industry, including the construction industry, to enter into collective bargaining agreements that employers do not find acceptable. *H. K. Porter Co., Inc. v. NLRB*, 397 U.S. 99, 107-09 (1970) (recognizing that Congress never intended the government to step into the collective bargaining process and impose substantive contract terms). The NLRA regulates the collective bargaining process, but neither compels agreement to a proposal nor permits either the NLRB or a federal court to impose substantive contract terms upon any party to the collective bargaining process. 29 U.S.C. § 158(d).

121. Section 8(e) of the NLRA makes it unlawful for the vast majority of the employers in the private sector to enter into "hot cargo agreements" with labor unions to cease or refrain from doing business with other employers. 29 U.S.C. § 158(e). That section of the statute does provide an exception for employers in the construction industry, but the Supreme Court has narrowed that exception to agreements between Contractors and Unions that have a collective bargaining relationship with each other. *Connell Constr. Co., Inc. v. Plumbers & Steamfitters Local Union No. 100,* 421 U.S. 616 (1975*).* Entering into an agreement that includes a wall-to-wall subcontracting clause with "stranger" unions arguably amounts to an unfair labor practice on the part of either party, as would a union's demand for such a clause in any context in which the union itself had an obligation to bargain in good faith. *See San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236, 244 (1959)

122. Congress delegated the authority to administer and enforce the NLRA to the National Labor Relations Board (the "NLRB" or "Board"), an independent executive agency. 29

U.S.C. § 153(a). In the NLRA, Congress delegated to the President only the authority to make certain appointments to that agency and to compel other departments and agencies to provide it with information. The President may (1) appoint the members of the NLRB, with the advice and consent of the Senate, (2) designate one of those members as the Chairman of the Board, and (3) remove a member of the Board for neglect of duty or malfeasance in office. 29 U.S.C. § 153(a). The President may also appoint the Board's General Counsel, with the advice and consent of the Senate, and he or she may temporarily fill vacancies in that position. 29 U.S.C. § 153(d). The President may also direct other departments and agencies to furnish the NLRB with records, papers, and information "relating to any matter before the Board." 29 U.S.C. § 161(6). But the President's authority ends here. The President has no authority to play any other role in either the administration or the enforcement of the NLRA. All other matters are committed to the discretion of the members and other officers of the NLRB, subject to judicial review. 29 U.S.C. § 160(e), (f). The PLA Mandate displaces this scheme by improperly arrogating to the President and the FAR Council the right to hijack the NLRA's enforcement scheme.

The Labor-Management Relations Act

123. Section 301 of the LMRA makes clear that Congress intended collective bargaining agreements to be enforceable, as written and signed. In full, that section provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. §185(a).

The Taft-Hartley Act

124. Section 14(b) of the LMRA (popularly known as the Taft-Hartley Act) authorizes states to enact right-to-work laws. 29 U.S.C. § 164(b). Right-to-work laws prohibit union security agreements between employers and labor unions which require employees who are not union members to contribute to the costs of union representation. Louisiana is one of 28 states that have enacted such laws. Many of the military bases where large-scale federal construction work is performed, including Barksdale Air Force Base in Bossier Parish, Louisiana, and Fort Polk in Vernon Parish, Louisiana, are considered "federal enclaves," meaning that state right-to-work laws do not apply in those places. Accordingly, in those federal enclaves, employees who are subject to PLAs may be required to join unions and thus be subject to the union security clauses that are only lawful in states without right-to-work protections.

125. Apart from the other vices of the PLA Mandate, this alone may result in those employees choosing to quit their jobs and find other employment rather than be forced to be members of a Union. This violates both the spirit and the letter of § 14(b) of the Taft-Hartley Act, 29 U.S.C. § 141 *et seq.*

The Administrative Procedure Act

126. Among other things, the Administrative Procedure Act (APA) waives the sovereign immunity of the United States and provides a federal cause of action to any person adversely affected by an action of a federal agency or agency official. 5 U.S.C. § 702.

127. In any suit brought pursuant to the APA, the Court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be," *inter alia*, "contrary to constitutional right, power, privilege, or immunity" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Id.* § 706(2)(B) and (C).

CLAIMS FOR RELIEF

Count 1: The President Acted *Ultra Vires*, In Excess of His Statutory Authority. (Brought against President Biden)

128. Plaintiffs re-allege and incorporate by reference the allegations of the preceding paragraphs.

129. The Order exceeds the President's statutory authority under the Procurement Act and is *ultra vires*. Executive Order 14063 is a misguided and illegal attempt to increase union participation among the United States' construction workforce; it categorically does not advance procurement policy. The purpose of the Procurement Act is to provide the federal government with an "economical and efficient system" for, among other things, procuring and supplying property and nonpersonal services. 40 U.S.C. § 101. The Procurement Act permits the President to prescribe certain policies and directives within the scope of the Act. 40 U.S.C. § 121. The President's power under the Procurement Act must be exercised consistently with the text, structure and purposes of the statute that delegates that power—namely, advancing the goals of efficiency and economy in procurement through the use of competitive procedures.

130. However well-intentioned the President's labor-relations policy may be, presidential actions taken to advance that policy are demonstrably not within the scope of the Procurement Act. The Procurement Act cannot be interpreted to serve as a tool of convenience for a President to implement sweeping policies that are legislative in nature and related to other public policy objectives, whenever he or she is unable to persuade majorities in Congress to enact legislation to the President's liking. Congress did not intend—and the Procurement Act does not allow—the President to exercise such sweeping authority with respect to labor-relations policy under the guise of "procurement" in the absence of specific congressional authorization. *See Whitman v. Am. Trucking Ass'ns*, *Inc*. 531 U.S. 457, 468 (2001); *Am. Fed'n of Lab. & Cong. of*

Indus. Orgs. v. Kahn, 618 F.2d 784, 793 (D.C. Cir. 1979) (The Procurement Act does not "write a blank check for the President to fill in at his will. The procurement power must be exercised consistently with the structure and purposes of the statute that delegates that power.").

131. In addition to being unsupported by the text and structure of the Procurement Act, the Order comes nowhere close to serving the statute's objectives. Among other failings, there is no close nexus between the Order and the Procurement Act's express purpose of providing an "economical and efficient system" of procurement. 40 U.S.C. § 101; *see Am. Fed'n of Lab. & Cong. of Indus. Orgs. v. Kahn*, 618 F.2d 784, 792 (D.C. Cir. 1979) (explaining that the Procurement Act is violated when the President does not demonstrate a "close nexus" between executive action and the Procurement Act's policy).

132. To the contrary, the Procurement Act, as amended by CICA, expressly prohibits the use of restrictive specifications unless they are necessary to satisfy the needs of the procuring agency. *See* 41 U.S.C. § 3306(a)(2)(B). Yet the Order acknowledges that PLAs will often be at cross-purposes with this statutory requirement. *See* Order § 5. Nevertheless, the narrow exceptions provided for in the order will lead to the inclusion of PLA requirements even where not necessary to agency requirements. *See id.* (permitting an exception only where use of PLAs "would ***substantially*** reduce the number of potential bidders") (emphasis added).

133. As a result, the Order operates at cross-purposes to the goals of economy and efficiency in procurement. The Order will reduce the number of bidders for large-scale federal construction contracting and make the process more expensive, less efficient, and less safe. In order to maintain a steady and predictable flow of goods and services through covered contracts, federal procurement requires a stable and reliable workforce to timely perform federal construction contracts, and relies on experienced, competent federal construction contractors to staff their

projects and complete their work safely and efficiently. Yet the Order is already disrupting the completion of large-scale federal construction contracts by impeding Contractors' ability to compete for these projects and use the people that they think best for the job. Experienced Contractors that expect to be affected by the Order and its Implementing Regulations are preparing to leave the federal marketplace.

134. The lack of presidential authority under the Procurement Act is highlighted by the Major Questions Doctrine. A clear statement by Congress is necessary before a court can conclude, in a case like this, that Congress intended to delegate to the President the specific authority President Biden attempts to exercise in the Order. *Biden v. Nebraska*, *supra*. *See also Louisiana v. Biden*, 55 F.4th 1017 (5th Cir. 2022) (federal contractor vaccine mandate not justified by the Procurement Act).

Count 2: The Order Exceeds the Constitutional Authority of the President (Brought against President Biden)

135. Plaintiffs re-allege and incorporate by reference the allegations of the preceding paragraphs.

136. The President's interpretation of the Procurement Act in issuing the Order authorizes sweeping and unprecedented Executive branch discretion that exceeds the President's constitutional authority under fundamental separation-of-powers principles.

137. The Order is not authorized by any authority vested in the Office of the President under Article II of the Constitution. It is unquestionably the exclusive province of Congress in our tripartite system of federal government to establish the laws, and for the Executive Branch to execute those laws under the leadership of the President. The President finds no authority in Article II to accomplish policy objectives not authorized by the laws enacted by Congress. *See Youngstown Sheet & Tube*, 343 U.S. at 635-40 (Jackson, J., concurring).

Count 3: The FAR Council's Regulations Implementing Regulations Are Unlawful (Brought against all Defendants other than President Biden)

138. Plaintiffs re-allege and incorporate by reference the allegations of the preceding paragraphs.

139. Under the APA, a court must "hold unlawful and set aside agency action" that is not in accordance with law. 5 U.S.C. §706(2)(A).

140. Similarly, a court must set aside agency action that is "contrary to constitutional right, power, privilege, or immunity" in violation of 5 U.S.C. § 706(2)B).

141. Because the President lacks constitutional authority to issue the Order, the Implementing Regulations are *a fortiori* unconstitutional. Among other defects, the Order violates separation-of-powers principles in that it does not establish any concrete criteria for exceptions to the Order. Instead, the Order, as implemented through the Final Rule, provides to "senior procurement executive[s]" the discretion to determine if any of a list of circumstances apply. *See* 88 Fed. Reg. at 88727 (to be codified at 48 C.F.R. § 22.504(d)). This list includes such nebulous catch-all circumstances as "specialized construction work that is available from only a limited number of contractors or subcontractors," "need for the project is of such an unusual and compelling urgency that a project labor agreement would be impractical," and "a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved."

142. None of these catch-all circumstances are sufficiently defined. This lack of concrete guidance unlawfully gives procurement officials within contracting agencies the unbridled power to grant exceptions to the Order. No statutory or constitutional power available to the President authorizes delegation of this power to administrative agencies such as the members of the FAR Council.

143. The PLA Mandate is also unlawful because it delegate improper control of federal procurement policy to the Unions without proper supervision and meaningful oversight by the FAR Council or any other federal agency, in violation of the private non-delegation doctrine. Because, pursuant to the private non-delegation doctrine, not even Congress has authority under the Constitution to delegate unbridled decision-making to private parties, *National Horseman's Benevolent & Protective Ass'n v. Black,* 53 F.4th 869 (5th Cir. 2022), it follows *a fortiori* that the Executive Branch cannot do so. Simply put, neither the President by Executive Order nor Executive Branch agencies by implementing regulations, may "execute" the law in a manner that would place unfettered control of federal procurement policy and decision-making in the hands of the Unions, which is the precisely what the PLA Mandate will do.

144. The PLA Mandate is also not in accordance with law and is unlawful within the meaning of 5 U.S.C. § 706(2)(A), both because (for the reasons alleged in Count 1) they violate the Procurement Act, 40 U.S.C. § 120 *et seq.*, and because (for the reasons alleged in Count 2), they are beyond the President's authority under Article II of the Constitution, and they are directly contrary to the NLRA and the LMRA, as those laws have been interpreted and applied by the U.S. Supreme Court in *Machinists* and *Garmon*. Further, the Final Rule violates § 14(b) of the LMRA, 29 U.S.C. § 164(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the Order and the Final Rule are in excess of statutory authority;

2. Declare that the Order and the Final Rule violate the Constitution;

3. Declare that the Final Rule is unlawful because it is not in accordance with law;

4. Issue an Order vacating the Final Rule;

5. Permanently enjoin Defendants from further implementing or enforcing the Final Rule, or from taking any other action to implement the Order; or, in the alternative, permanently enjoin Defendants from implementing or enforcing the Final Rule against any of Plaintiffs' members.

6. Award Plaintiffs such other relief as this Court deems appropriate.

[DATE]

Respectfully submitted,

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Verification

I, Jordan Howard declare as follows:

I am a representative of the Plaintiff the Associated General Contractors of America, Inc., in the present case. I declare that the statements above, which I have read, are true and correct to the best of my information, knowledge, and belief.

_____
Jordan Howard
Counsel, Federal and Regulatory Affairs

Subscribed to and sworn before me this _____

_____
Notary Public
[location]
My commission expires: _____