or reject what the private party does. Otherwise, the Congress will have delegated power to private people without the proper limits. This legislation clearly violates the Vesting Clauses of the Constitution.

That's exactly what this bill would do. After forcing employers and workers into arbitration, it would assign their case to a panel of private arbitrators. These arbitrators would then be authorized to write an agreement and impose it on the parties. Parties might object to the mandated agreement. But no party would have any way to challenge it. Once the arbitrators made a decision, the decision would be final. No public official would review it; no public official would make sure that it was fair. The arbitrators are private people, and this bill would give them ultimate power to regulate the workplace. That's a major Vesting Clause problem.

Some might argue that H.R. 5408 does not delegate any government power. Is not this all about labor contracts? But that would be wrong. These contracts are not really contracts. A contract is a legally binding agreement that parties mutually agree to; and parties under this proposed legislation will have no right to challenge the imposed contract terms. Instead, the terms are imposed by law—this law. They are effectively regulations. And regulating the workplace is a government power. So, the government cannot give that power to private people without building in public oversight. This bill has no oversight. It is flagrantly unconstitutional.

There are also Appointments Clause and delegation issues under the proposed legislation. Under the Appointments Clause, all officers of the United States have to be appointed by the President and confirmed by the Senate. Likewise, inferior officers have to be appointed by the President, the head of a department, or a court. The line between officers and inferior officers can be unclear. But it is clear, however, that if someone has final say imposed by legislation, that person is an inferior officer. So at minimum, the person must be appointed by the president, a department head, or a court.

This bill has nothing like that. Instead, one arbitrator is appointed by a union, one by an employer, and the third arbitrator, unless mutually agreed upon by the parties, would be appointed by the Federal Mediation and Conciliation Service—which, as previously noted, does not have sufficient personnel to even begin to undertake the mandated mediation and arbitration procedures contained in this legislation. So, private parties will have appointed individuals acting as government officers, and there is no requirement that they be appointed by a department head. And once they're appointed, they have final say over the agreement's terms. At minimum, that makes them inferior officers, who exercise ''substantial executive power.'' This is clear from the holdings in cases like the Supreme Court's decisions in Freytag v. Commissioner and Lucia v. SEC, both of which dealt with lower-level adjudicators. And in fact, in both cases, the parties who had their cases tried by the adjudicators could at least appeal to someone. The parties would have no right to appeal under this bill. These arbitrators would have even more power. This bill makes no effort to comply with the Constitution's appointment rules.

Perhaps the most important constitutional defect of this bill is that it would turn every initial collective bargaining agreement written by government-mandated private arbitrators into a constitutional litigation battleground.

Normally, private contracts do not have to satisfy the Constitution. That's because the Constitution only concerns government action. Under well-established NLRA case law, employers and unions are required to bargain in good faith, with the ultimate objective of reaching an agreement. It is important to note, however, that well-established law also permits any party in collective bargaining to refuse to agree to the other party's proposals or positions. They can always stand on their own positions. So anything they do agree on is ultimately a private decision. And because it is a private decision, the government does not have a say over the final terms. In other words, the agreement involves no ''state action.'' And when there's no state action, there's nothing to trigger a constitutional analysis.

This bill turns that principle on its head. It forces employers and employees to accept an agreement imposed over their objection. And it imposes that agreement by law. The agreement, therefore, is not really an agreement at all: it is a regulation. And because it's a regulation, it is state action. Everything in it has to pass constitutional muster.

That's a real problem. Today, if collective bargaining agreements had to satisfy the Constitution, most of them would fail. Let's just run through a few common examples. Start with compulsory dues. Compulsory dues and fees are payments that non-member employees have to pay to the union in order to keep their job. In right-to-work states, they're illegal. But twenty-four (24) states still allow them. And when they are included in an agreement, employees have to pay the dues or fees whether they want to or not.

But the government cannot impose compulsory payments. In Janus v. AFSCME, the Supreme Court said that the government could not force public employees to pay fair-share fees because there was not a sufficient government interest. That was classic compelled speech, which the Constitution does not allow.

To date, courts have understood Janus as being limited to the public sector. That's because only in the public sector does the state directly force employees to pay the fees. But once this bill passes, that distinction will disappear. The government will be involved whenever an arbitral-created contract requires fair-share fees. All of those contracts will be open to attack in our courts. All of them will be subject to First Amendment scrutiny.

Today, many contracts give the union the right to come into the workplace and speak with the employees at certain times. In a private contract, that's fine. But under constitutional analysis, it's a ''taking.'' In Cedar Point Nursery v. Hassid, the Supreme Court held that California could not force farmers to give unions access to their property. In effect, California had extracted a right to access—an ''easement.'' An easement is property. And the government cannot take property without just compensation. California gave the farmers no compensation, and neither would this bill. So any time this bill imposed a contract with union access rights, it would take property and violate the Fifth Amendment.

There are even more problems in the constitutional area regarding this legislation. For example, grievance procedures would have to comply with constitutional due process. No-strike clauses would have to comply with the Thirteenth Amendment. The problems are endless. We have no idea how far they would go, because the people who wrote this bill didn't think about them. The authors have never explained how we're going to deal with constitutionalizing every government-mandated initial collective bargaining agreement. They have never explained how we're going to deal with the flood of litigation that will wash over our courts. They have never explained any of it—because they can't. This bill is a constitutional disaster waiting to happen.

Sincerely,

G. ROGER KING,
King Labor Law.
ALEX MACDONALD,
Co-Chair, Littler Mendelson Workplace Policy Institute.

COMMEMORATING 100 YEARS OF THE FRANCISCAN SISTERS OF THE IMMACULATE CONCEPTION

HON. J. LUIS CORREA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 15, 2026

Mr. CORREA. Mr. Speaker, I rise today to commemorate the legacy of the Franciscan Sisters of the Immaculate Conception and acknowledge their dedication to education, healthcare, and pastoral work, which has persisted through religious hardship and continued to sustain the values of consecrated life.

June 13, 2026, signified the 100th anniversary of the Franciscan Sisters of the Immaculate Conception's mission in providing homes, education, and healthcare across the globe. The Congregdtion continues to extend its mission, addressing the needs of the communities they serve.

We recognize the service of the Franciscan Sisters of the Immaculate Conception and their ongoing contributions to the reparation of society. By following the example of Saint Francis of Assisi—especially in their contribution to their mission in the face of religious persecution—the Congregation embodies the effort inspired by the Holy Spirit that drives the Congregation.

Their commitment to prayer, community, and service remains central to the Congregation and their work today.

I extend my heartfelt congratulations to Franciscan Sisters of the Immaculate Conception and honor their mission in maintaining housing and social outreach to their communities on this significant occasion celebrating 100 years of mission.

RECOGNIZING MASTER SERGEANT DAVID ''LUCKY'' LUCIANO

HON. SCOTT PERRY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, June 15, 2026

Mr. PERRY. Mr. Speaker, I rise to recognize Master Sergeant (MSgt) David "Lucky" Luciano on the auspicious occasion of his retirement upon nearly 30 years of service to our Nation in the Pennsylvania Air National Guard.

MSgt Luciano first enlisted in the Air National Guard with the 201st RED HORSE Squadron in October 1997. He attended Basic Training at Lackland AFB, Texas, and became an Engineering Assistant after completing Technical Training at Ft. Leonard Wood, Missouri. Over the course of his nearly 30 years in service, MSgt Luciano ultimately earned promotion to the rank of Master Sergeant and became the Non-Commissioned Officer in Charge of the Pennsylvania Air National Guard Engineering Section.