

February 2, 2023

Fairfax County Board of Supervisors
12000 Government Center Pkwy
Fairfax, VA 22035

Dear Fairfax County Board of Supervisors:

On behalf of Associated Builders and Contractors¹ of Virginia's 257 member contractors with offices in and around Fairfax County along with their experienced employees who live in and build premier public and private construction projects in Fairfax County and the Northern Virginia and Washington, D.C., region, I am writing to express opposition to any ordinances requiring controversial government-mandated project labor agreements on taxpayer-funded county construction projects.²

ABC and our members know³ that a PLA mandate will discourage competition from many of the best local contractors and deny opportunities to the 95.4% of the Virginia construction industry workforce that chooses not to join a union⁴ and prevent participants in merit shop workforce development programs from obtaining high-paying jobs on taxpayer-funded projects.

Why Are Government-Mandated PLAs Opposed by Local Contractors and Construction Workers?

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules and pay into union benefit and multiemployer pension plans. This forces employers whose workers have freely made the choice not to join a union to pay "double benefits" into their existing employee benefit plans and union plans and places these qualified firms at a significant competitive disadvantage.⁵ It can also expose contractors to unfunded multiemployer pension plan withdrawal liabilities.

In addition, research suggests that the few nonunion employees permitted to work on a PLA jobsite lose up to 34% of wages and benefits unless they pay union dues and/or join a union and meet benefits plan vesting schedules.⁶ In short, these anti-competitive provisions in PLA mandates promote wage

¹ Associated Builders and Contractors is a national trade association representing over 22,000 members from more than 19,000 construction and industry-related firms. Founded on the merit shop philosophy, ABC Virginia is one of 68 ABC chapters that helps our 650 Virginia members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which they work. The majority of ABC member companies, known as merit shop contractors, are not signatory to a construction trade union and have a core workforce of experienced and qualified employees that do not belong to a construction trade union.

² Fairfax County is now permitted to pass an ordinance requiring PLAs on county projects as a result of legislation (HB 358/SB 182) passed in 2020, effective May 1, 2021 (§ 2.2-4321.2 Code of Virginia).

³ See [Fairfax should put its taxpayers and workers first](#), Washington Post, May 6, 2021, and [Virginia Gov. Ralph Northam can put the commonwealth's contractors and taxpayers first](#), Washington Post, April 9, 2020.

⁴ The U.S. Bureau of Labor Statistics' [January 2023 Union Members Summary](#) (<https://www.bls.gov/news.release/union2.t03.htm>) states that nonunion employees comprise 88.3% of the total U.S. construction industry workforce. According to www.unionstats.com, in 2021, 95.4% of the private construction workforce in Virginia did not belong to a union. In Washington, D.C., and Maryland, 88.6% and 87.8% of the private construction workforce did not belong to a union, respectively. There is no government information about the percent of unionized construction workers in Fairfax County.

⁵ McGowan, John R., Ph.D., CPA, [Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#), October 2021. The McGowan report found that nonunion contractors are forced to pay in excess of an estimated 35% in compensation costs above and beyond existing rates already subject to prevailing wage laws as a result of "double payment" of benefit costs to union plans as a result of a PLA.

⁶ McGowan, John R., Ph.D., CPA, [Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#), October 2021.

theft, eliminate employee choice for union representation and make it extremely difficult for the vast majority of Virginia's small, minority- or women-owned firms to win public works contracts subject to anti-competitive PLAs because they are almost all not signatory to unions.⁷

When mandated by government entities, a PLA effectively stifles fair and open competition, chills job creation and prevents taxpayers and owners from getting possible construction project at the best possible price.

Multiple studies of hundreds of taxpayer-funded affordable housing⁸ and school construction⁹ projects found that government-mandated PLAs increase the cost of construction by 12% to 20% compared to similar non-PLA projects already subjected to prevailing wage requirements.

PLAs Exacerbate Industry Skilled Labor Shortage

PLAs are likely to exacerbate the Virginia construction industry's skilled labor shortage by excluding more than 9 out of 10 construction workers who do not belong to a union. In addition, PLAs typically do not allow participants in government-registered apprenticeship programs unaffiliated with unions to work on a PLA project. If the goal of a PLA is to develop a construction workforce, it makes no sense to mandate a PLA and cut off a viable workforce development pipeline provided by association and company government-registered apprenticeship programs because they are not affiliated with unions. In addition, contractors utilize a vast ecosystem of modern and effective workforce development programs that are of equal or better quality but are not limited to time-based registered apprenticeship programs provided by unions and favored by PLAs.

Are PLA Mandates a Pathway to Well-Paying Jobs and Local Workforce Hires?

PLA proponents claim government-mandated PLAs ensure construction workers are paid high wages. However, the Fairfax County Board of Supervisors passed a prevailing wage law in 2022 that applies to all construction projects procured by the county of \$250,000 or more.¹⁰ In addition, local contractors typically pay an hourly market wage and benefits rate that exceeds government-determined prevailing wage rates on public and private projects without the problematic terms, conditions and wage theft associated with typical PLAs.

PLA proponents also claim government-mandated PLAs create a pathway to jobs for Fairfax County and Virginia residents. However, by excluding more than 9 out of 10 members of Virginia's construction workforce who choose not to join a union, it is far more likely PLAs will injure local hiring efforts. For example, proponents of a government-mandated PLA promoted "successful" local hire outcomes as a

⁷ See March 17, 2020, letter from the National Black Chamber of Commerce to Gov. Northam, opposing PLA and prevailing wage legislation: <https://buildvalocal.com/gehudim/sites/38/2021/04/nbccpdf.pdf>, and an April 9, 2020, letter to the editor of the Richmond Times Dispatch, [Legislation might hurt small construction firms](#).

⁸ Ward, Jason M., The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH. Santa Monica, California.: RAND Corp., 2021. https://www.rand.org/pubs/research_reports/RR1362-1.html.

⁹ See five studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut (2020), Massachusetts (2006), New Jersey (2019), New York (2006) and Ohio (2017) by the Beacon Hill Institute (<http://beaconhill.org/labor-economics/>); an October 2010 report by the New Jersey Department of Labor and Workforce Development, Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008 (https://www.nj.gov/labor/forms_pdfs/legal/2010/PLAReportOct2010.pdf); and a 2011 study by the National University System Institute for Policy Research, Measuring the Cost of Project Labor Agreements on School Construction in California (<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>).

¹⁰ As of July 1, 2022, county public works construction contracts of \$250,000 or more are subject to prevailing wage requirements as a result of a Fairfax County ordinance passed Jan. 25, 2022, which is permitted as a result of Virginia legislation passed in January 2020 changing § 2.2-4321.3 of the Virginia code.

result of the Nationals Park PLA mandated by the D.C. Council.¹¹ However, the truth is the Nationals Park PLA failed to deliver on its local hiring promises.

According to the November 2009 DC Progress report, *The True Cost of the Washington Nationals Ballpark Project Labor Agreement*:¹²

“The Nationals Park PLA created a huge barrier for the District’s non-union workforce: 85 percent of construction workers and 95 percent of minority-owned contractors were left out of the work.”

In addition, the study found reduced competition in bidding and other problems needlessly increased construction costs:

“The cost of the ballpark may reach \$800 million,¹³ more than double the initial cost estimate of \$395 million. The union-only PLA increased costs by reducing the pool of potential bidders. Future PLAs will do the same.”

The Nationals Park PLA established three main goals to track and measure the PLA’s success in local job creation. However, the PLA only met one goal. For example, the PLA was supposed to ensure workers residing in Washington, D.C. performed 50% of journey-level hours, but the report found that goal was not met:

“For the journeyman goal of the stadium PLA to have been met, the project needed to increase the number of DC journeymen hours by 93 percent. A whopping 74 percent of the higher paid journeymen hours went to non-residents.”

Data used in the DC Progress report is from a September 2008 report from the Clark/Hunt/Smoot joint venture to the DC Sports and Entertainment Commission,¹⁴ which indicates contractors missed multiple hiring goals set by the PLA.¹⁵

Another study, *Broken Promises, Big Losses: The Story of DC Workers Watching from the Dugout as the \$611 Million Washington Nationals Ballpark is Built*, found a PLA couldn’t deliver on local hiring promises either:¹⁶

“...non-D.C. residents worked 506,926 journeyman hours (71.1 percent of total journeyman hours), while D.C. resident worked just 206,444 journeyman hours (28.9 percent), far below the PLA requirement that D.C. residents work 50 percent of total journeyman hours.”

Additionally, this study found that half of the contractors involved in the project hired no new apprentices. Of the companies that hired new trainees, only 17 of 56 met the PLA requirement that 100% of new apprenticeships go to D.C. residents.

¹¹ See *Nationals Stadium PLA* at <http://thetruthaboutplas.com/wp-content/uploads/2013/09/DC-Nationals-Stadium-PLA-As-Issued.pdf>

¹² DC Progress, *The True Cost of the Washington Nationals Ballpark Project Labor Agreement*, November 2009.

¹³ Washington City Paper, *Please Stop Calling It a \$611 Million Ballpark Please*, March 31, 2008.

¹⁴ Clark/Hunt/Smoot JV, *Setting a New Standard for Economic Inclusion for District Businesses and Workers in the Construction of the New Nationals Ballpark. A Report to the DC Sports & Entertainment Commission*, Sept. 10, 2008.

¹⁵ See <http://thetruthaboutplas.com/wp-content/uploads/2013/09/Nationals-Baseball-Stadium-Cost-and-Local-Hire-Packet.pdf>

¹⁶ District Economic Empowerment Coalition, *Broken Promises, Big Losses: The Story of DC Workers Watching from the Dugout as the \$611 Million Washington Nationals Ballpark is Built*, Oct. 2, 2007.

Incidentally, the September 2008 Clark/Hunt/Smoot joint venture report to the DCEC appears to be the last public accounting of local hiring on the Nationals baseball stadium. The D.C. Council has not released any final data despite multiple requests.

In 2013, data collected by Del. Eleanor Holmes-Norton (D) on federal projects located in the district that were subject to PLA mandates demonstrated that PLAs delivered worse local hiring outcomes than other large-scale federal project not subject to a PLA mandate.¹⁷

Projects subject to government-mandated PLAs often fail to deliver on local hire promises and do not lead to any net local job creation because:

- Guaranteeing a local workforce is against most union hiring hall rules, which dispatch workers on a first-in, first-out basis, giving preference to union members who have been out of work for the longest amount of time;
- In a booming construction market, there is not enough available skilled union labor to meet project demands and needs;
- In a normal construction market, in certain crafts, there is not enough skilled local union labor to meet local hiring demands and unions signatory to PLAs are located in other states—on Nationals Park, union labor came from as far away as Philadelphia; and
- In normal and booming construction markets, out-of-area union members called “travelers” or “boomers” are given hiring preference over local nonunion construction workers under a typical PLA.

Finally, union contractors often engage in “checkerboarding” to meet local hiring goals, which is the practice of taking local workers off of other projects and using them on PLA projects subject to local hire and backfilling those vacated jobs with non-local union workers. As such, there is no net gain in local employment for the community.¹⁸

The Fairfax County Board of Supervisors could enhance local workforce and contractor hiring efforts without the discriminatory, costly and anti-competitive outcomes of government-mandated PLAs.

PLAs Are a Solution in Search of a Problem: Virginia Has a Minimal History of Work Stoppages

The argument that Fairfax County needs a PLA to prevent work stoppages caused by labor unions is not relevant to this market. There have been virtually no government-mandated PLAs in the Northern Virginia market. Despite this, according to a list of construction industry work stoppages recorded by the Federal Mediation and Conciliation Service, there have been only eight construction industry work stoppages in Virginia since 1984.¹⁹ Outside of two Teamsters-led work stoppages in 2015 in Springfield, the most recent work stoppage was in 1994.²⁰

¹⁷ See [www.TheTruthAboutPLAs.com](http://thetruthaboutplas.com) <http://thetruthaboutplas.com/2013/03/11/data-busts-myth-that-project-labor-agreements-result-in-increased-local-hiring/>

¹⁸ See [www.TheTruthAboutPLAs.com](http://thetruthaboutplas.com) <http://thetruthaboutplas.com/2010/08/05/project-labor-agreements-and-big-labor-fail-at-local-job-creation/>, Aug. 5, 2010.

¹⁹ The most recent Federal Mediation and Conciliation Service “Work Stoppages” data from 1984 through FY 2019, available at <https://www.fmcs.gov/resources/documents-and-data/> has been combined and sorted exclusive to the construction industry here: <https://thetruthaboutplas.com/wp-content/uploads/2021/03/Construction-Industry-Work-Stoppages-1984-FY19-downloaded-from-FMCS-013021-V-022421.xls>

²⁰ Likewise, [the U.S. Department of Labor Bureau of Labor Statistics' Work Stoppages Program](#), which tracks major work stoppages involving 1,000 or more workers, [found there have been just seven major work stoppages in the construction industry in the last 10 years](#) and none occurred in Virginia.

Problematic PLAs in Region

State and local governments in Northern Virginia have never used government-mandated PLAs. Likewise, the federal government has not required PLAs on any large-scale federal contracts in Virginia or Maryland.²¹ In addition, federal agencies have refused to mandate additional PLAs on federal projects in the District of Columbia since it experienced increased costs and delays on a handful of federal construction contracts subject to a PLA during an initial pilot program with the General Services Administration following President Obama's pro-PLA Executive Order 13502, which encouraged federal agencies to mandate PLAs on federal construction contracts of \$25 million or more.

In 2010, the GSA awarded a \$52.3 million contract to a general contractor to build the Lafayette federal building in Washington, D.C., but then forced the contractor to sign a change order and build it with a union-favoring PLA that cost taxpayers an additional \$3.3 million.²² Another project, the GSA Headquarters at 1800 F St. in the district suffered a 107-day delay and millions of dollars in cost increases as a result of failed PLA negotiations by labor unions.²³

Stakeholders concerned about the anti-competitive and costly impact of government-mandated PLAs should look at anecdotal results and controversy surrounding these federal projects and additional government-mandated PLAs in the Washington, D.C., area, including Nationals Park, the Walter E. Washington Convention Center, the Prince George's County Memorial Library in Laurel, Maryland,²⁴ and the initial bid results on the Woodrow Wilson Memorial Bridge project before the PLA mandate was eliminated.

In contrast, fair and open competition free from government PLA mandates worked on the \$376 million 11th Street Bridge, the Wilson Bridge, the Pentagon renovations, FedEx Field, Phase 1 and Phase 2 of Virginia's Silver Line rail project and thousands of other projects in the region.

PLAs Should Be Voluntary

Contractors should be free to voluntarily execute a PLA with unions and negotiate the terms and conditions of the agreements directly with unions to ensure a project is delivered safely, on time and on budget. There have been a few examples of projects in the region built by firms that have voluntarily executed a PLA with unions, such as portions of Phase 1 and 2 of the Silver Line, the Springfield Interchange and improvements to I-95 Express lanes. When PLAs are mandated by a government or owner prior to the competitive bidding process, construction firms have no opportunity to negotiate the terms of the agreement, yet they shoulder all of the project performance risk. It is one of the key reasons why PLA mandates discourage competition and increase costs.

Solutions

If the Fairfax County Board of Supervisors are interested in examining the true impact of government-mandated PLAs on cost, competition and local workforce and contractor hiring through a PLA pilot

²¹ Executive Order 13502, *Use of Project Labor Agreements for Federal Construction Projects*, signed Feb. 6, 2009 (<https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf>) and related FAR Case 2009-005, effective May 13, 2010 (<https://www.regulations.gov/docket?D=FAR-2009-0024>), encourages federal agencies to mandate PLAs on a case-by-case basis on large-scale federal construction contracts exceeding \$25 million.

²² See [www.TheTruthAboutPLAs.com](http://thetruthaboutplas.com) <http://thetruthaboutplas.com/2012/04/10/gsa-wasted-millions-on-union-handout-wheres-the-outrage/>

²³ See [www.TheTruthAboutPLAs.com](http://thetruthaboutplas.com) <http://thetruthaboutplas.com/2013/03/05/delays-and-increased-costs-the-truth-about-the-failed-pla-on-the-gsas-1800-f-street-federal-building/>

²⁴ See [www.TheTruthAboutPLAs.com](http://thetruthaboutplas.com) [New Report Says Anti-Competitive PLAs Won't Help District of Columbia Economy](http://thetruthaboutplas.com/2010/03/31/new-report-says-anti-competitive-plas-wont-help-district-of-columbia-economy/), March 31, 2010, and [Prince George's County Abandons Anti-Competitive, Budget-Busting Project Labor Agreement on Laurel Library](http://thetruthaboutplas.com/2014/10/09/prince-georges-county-abandons-anti-competitive-budget-busting-project-labor-agreement-on-laurel-library/), Oct. 9, 2014.

project program,²⁵ we recommend that the procurement allow contractors to bid on pilot projects with a PLA and without a PLA in order to facilitate an apples-to-apples examination of controversial PLAs.

In addition, the board should add language to pilot projects that exempts major trade packages from a PLA if the general contractor does not receive at least four bidders from subcontractors for trade packages (HVAC, electrical, plumbing, etc.), which is a successful practice utilized by the MGM casino project in Maryland.

If the board wants to measure the impact of PLAs on local hiring, it should require general contractors and subcontractors to submit certified payrolls and an aggregate report of all labor hours worked on the project broken down by workforce demographics (age, gender, race) and residency. They should also track the participation of all tiers of local, small, women, minority and veteran-owned businesses hired as subcontractors to evaluate the impact of PLAs on these businesses.

Finally, the board should ensure that any PLA exempts the few nonunion firms and employees allowed to work on a PLA project from paying into union pension and benefits funds. Merit shop firms should be allowed to continue to pay into their existing plans, including retirement benefits tied to the employee, in order to avoid wage theft and multiemployer pension plan withdrawal liability common on PLA projects.

Ensuring fair and open competition on Fairfax County construction projects will ultimately result in cost savings, more jobs, more opportunities for all qualified small, minority- and women-owned businesses in the construction industry and the completion of more construction projects built by quality contractors and construction workers safely, on time and on budget.

I would welcome the opportunity to discuss this issue in greater detail with the board of supervisors and county staff.

Respectfully,

Pat Dean
President, ABC Virginia
42680 Trade West Drive
Dulles, VA 20166
pat@abcva.org
703-968-6205

²⁵ The Accotink Pump Station Rehab WW-00001-013 has been the only identified PLA Pilot project, according to this Sept. 21, 2021, briefing: <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting-materials/2021/sept21-legislative-pla-briefing.pdf>