

Testimony of Congressman John Sullivan (OK-1)

Oversight & Government Reform Subcommittee on Technology, Information Policy,

Intergovernmental Relations & Procurement Reform

**“H.R. 735 and Project Labor Agreements: Restoring Competition and Neutrality to
Government Construction Projects”**

June 6, 2011

Chairman Lankford, Ranking Member Connolly, members of the Subcommittee, thank you for holding this hearing today. Every day of this Congress has brought us face to face with tough decisions on spending cuts, cost-savings proposals, policies that encourage job creation and ways to preserve the American dream for our posterity. It is clear now more than ever that each fiscal decision that Congress makes has an impact on the sustainability of America’s prosperity. I bring to your attention today H.R. 735, the Government Neutrality in Contracting Act, which will save jobs, create jobs, and prevent the waste of taxpayer dollars on federal and federally assisted construction projects by reestablishing fair and open competition.

To begin, a project labor agreement (PLA) is a contract that typically forces contractors and subcontractors to agree to recognize unions as the representatives of their employees on that job in order to win a construction contract. PLAs typically force contractors to use the union hiring hall and pay fringe benefits into union-managed benefit and pension programs. PLAs also contain clauses that force contractors and employees to obey the restrictive and inefficient work rules and job classifications common in union collective bargaining agreements but absent in the standard operation of open shop contractors.

While it is technically true that any contractor is welcome to compete on for a project that requires government-mandated PLA, both general contractors and subcontractors must agree to the terms and conditions of a PLA in order to win the contract. The practical effect of these agreements is to discourage competition from contractors opposed to the terms of the PLA.

In 2001, President George Bush issued Executive Orders 13202 and 13208 to maintain government neutrality in federal contracting. These Executive Orders prohibited the government from requiring contractors to adhere to PLAs as a condition of winning federal or federally-funded construction contracts. Because President Bush's Executive Order was about maintaining neutrality, a contractor could also voluntarily enter into a PLA if they felt it could make their business competitive and deliver the best product to the government.

However, in 2009, President Obama issued Executive Order 13502, encouraging federal agencies to require union-favoring PLAs on federal construction projects exceeding \$25 million in total cost. While President Obama's Executive Order does not mandate PLAs on all federal construction contracts, it does nothing to preserve the neutrality that government should maintain. Rather, it exposes federal procurement officials to intense political pressure from special interest groups, politicians, and political appointees to require PLAs. As I and the other panelists place the facts before you, you will see how this is a dangerous path.

Government-mandated PLAs are not only discriminatory, but they are also hurtful to a struggling industry that is already facing unemployment above 17 percent. For example, yesterday the Wall Street Journal reported on a \$70 million highway construction contract in New York, funded at least 80 percent by the Federal Highway Administration, that has been scrutinized for the decision to subject it to a PLA. While 27 percent of New York's private

construction workforce is unionized, that means the employers of 73 percent of New York's construction workforces, who having been facing steep job losses over the past few years, are discouraged from bidding for this project. Unfortunately, limiting competition comes at taxpayer expense. The article mentions that the PLA cost taxpayers an additional \$4.5 million because the lowest responsible bidder, a merit shop contractor, was thrown off the project in favor of a union contractor, because the merit shop contractor would not sign a PLA.

Executive Order 13502 states that its purpose is to promote efficiency. However, there is little evidence to suggest PLAs promote efficiency in federal contracting. There were no examples of inefficiencies during the Bush years when PLA mandates were restricted.

I am aware of anecdotal evidence on recent federal construction projects demonstrating an increase in construction costs that may not provide corresponding benefits to taxpayers or construction owners. For instance, a U.S. General Services Administration (GSA) renovation project for the Lafayette Federal Building in Washington, D.C. was awarded to a federal contractor without a PLA at \$52.3 million. However, after this contractor agreed to a PLA for the project by the GSA, the contractor added \$3.3 million to the cost of the project. The added \$3.3 million isn't the result of increased material costs, revised blueprints or a more aggressive completion deadline. The contract was awarded to the same contractor with the same proposal, and the only difference was the PLA. These are just two examples, but there is no doubt that there are many more stories reflecting the true colors of government-mandated PLAs.

When mandated by public officials, these agreements unfairly discourage competition from 87 percent of the entire U.S. private construction workforce, effectually raise the

unemployment rate of this industry, cost the government billions more in construction costs and do nothing to increase efficiency of federal construction projects.

There is a solution. H.R. 735, the Government Neutrality in Contracting Act, will prohibit executive agencies and recipients of federal funds from requiring contractors to agree to PLAs as a condition of winning a federal construction contract. Contractors are free to enter into a PLA if they want to, but the government is removed from that decision making process. If enacted, this bill guarantees that all qualified contractors and their skilled workforces, regardless of labor affiliation, can compete on a level playing field. This expands job opportunities, reduces costs to the government and prevents discrimination based on labor affiliation. All told, H.R. 735 will ensure that taxpayers get the best possible product at the best possible price.

Once again, thank you Chairman Lankford, Ranking Member Connolly, and the other members of the Subcommittee for allowing me to speak today on behalf of H.R. 735, and I am happy to take some of your questions.