



March 16, 2010

The Honorable Lynn Woolsey
Chair
Subcommittee on Workforce Protections
House Education and Labor Committee
112 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Workforce Protections
House Education and Labor Committee
112 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Woolsey and Ranking Member McMorris Rodgers:

On behalf of Associated Builders and Contractors (ABC), a national association with 77 chapters representing 25,000 merit shop construction and construction-related firms with 2 million employees, we appreciate the opportunity to submit this statement as part of today's Subcommittee hearing entitled, "Protecting America's Worker Act: Modernizing OSHA Penalties." ABC and its members are ardent advocates of workplace safety, which is demonstrated through our proven record of cooperation and collaboration with OSHA and dedication to workplace safety education and training. ABC, however, strongly opposes H.R. 2067, *Protecting America's Workers Act* (PAWA). We believe, if enacted, the PAWA will increase litigation, create disincentive for cooperation between employers, associations and OSHA, while failing to improve workplace safety and health.

Over the years, ABC and its 77 chapters nationwide have had the privilege of building excellent working relationships with OSHA's national, regional and area offices. OSHA staff members have addressed ABC members at our annual Construction Education Conference, worked with our chapters to conduct safety training courses throughout the country. Communication between both OSHA and ABC members has increased understanding of workplace safety, which has contributed to the decrease in the number of fatalities and injuries in the construction industry since 1994.

The PAWA changes to OSH Act's penalty scheme, in particular change in *mens rea* requirements for criminal liability from "willful" to "knowing" and the broadening to the definition of employers from "any responsible corporate officer" to "officer or director," would create uncertainty that will lead to increased litigation and create a more combative relationship between OSHA and employers. This will likely negatively impact cooperative programs, which have been effective in promoting workplace safety.

We also oppose the PAWA's provision requiring immediate abatement and the limits the provision imposes on an employer's ability to challenge a citation. This denies employers due process rights and OSHA already has the authority to seek an injunction if a hazard poses an imminent threat.

The construction industry is already strained with job loss, with unemployment at 27.1 percent – nearly three times the national average, and adding more bureaucratic layers to an already burdened industry is not conducive to expedient economic recovery. Jobsite safety and health is a top priority for ABC, whose objective is to have “zero accident” worksites.

ABC supports legislation that seeks to protect our members’ most important asset – their employees. This must be achieved through legislation and regulations, which provide consistent enforcement, incentive programs to increase compliance, and education efforts, rather than efforts that will increase litigation, stifle cooperative programs and deny employer due process rights. We look forward to working with the Committee to address our concerns with this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Brewster B. Bevis".

Brewster B. Bevis
Senior Director, Legislative Affairs