



July 15, 2014

United States House of Representatives  
Washington, D.C. 20515

Dear Representative:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 21,000 chapter members, I am writing to express our opposition to an amendment being offered by Rep. Ellison (D-Minn.) to the Financial Services and General Government Appropriations Act, Fiscal year 2015 (H.R. 5016). This amendment would prevent federal contractors with Fair Labor Standards Act (FLSA) violations in the past five years from being awarded any federal contracts funded by this bill. This may give the Obama administration an opportunity to create what is tantamount to a “blacklist” of federal contractors that would not be permitted to compete for federal work, similar to something proposed in the 1990s by the Clinton administration. ABC urges you to oppose this amendment when it comes to the House floor for a vote, and we will consider this a **KEY VOTE** for our 113th Congressional scorecard.

Though this will be billed as a pro-worker initiative to prevent wage theft, Rep. Ellison’s amendment would accomplish just the opposite by preventing numerous Fortune 500 employers from entering into or renewing contracts with the federal government—effectively jeopardizing workers whose jobs are tied to their employer's federal contracts. This amendment would act as an automatic, potentially multi-year debarment of federal contractors, while entirely circumventing longstanding and proven suspension and department procedures addressing FLSA violations that are part of the federal contracting process. Moreover, the amendment completely ignores penalties and remedies that are already available under the FLSA, including double backpay awards for employees affected by the violation.

It should be further noted that the 1938 Fair Labor Standards Act's requirements are in many instances so vague and outdated that even the U.S. Department of Labor (DOL), which enforces the law, has a difficult time complying with them. In fact, the DOL’s inability to distinguish between who is exempt from the FLSA's overtime requirements resulted in a grievance brought against it by more than 1,900 employees that ultimately was settled by awarding backpay to a number of them. Should this result in the defunding of (or additional penalties for) the DOL?

This amendment has been introduced on the floor on three recent appropriations bills, but received virtually no substantive debate.

On May 29, Rep. Ellison sought to attach this language via a floor amendment (H. Amdt. 759) to Commerce, Justice, Science, and Related Agencies Appropriations Act, Fiscal Year 2015 (H.R. 4660), but the amendment failed on a recorded vote of 196 to 211 (Roll no. 262). On June 10, Rep. Raul Grijalva (D-Ariz.) offered this same amendment to the Transportation, Housing and Urban Development and Related Agencies Appropriations Act, Fiscal Year 2015 (H.R. 4745) and it was accepted via an unrecorded voice vote. On June 19, an amendment (H. Amdt. 926) offered by Rep. Ellison to the Department of Defense Appropriations Act, Fiscal Year 2015 (H.R. 4870) was adopted by a recorded

vote of 212 to 204 (Roll no. 331). Most recently, on July 10, the Ellison amendment was adopted via voice vote to the Energy and Water Development and Related Agencies Appropriations Act, Fiscal Year 2015 (H.R. 4923).

This time around, we believe it warrants a much closer examination and should be rejected.

The federal contracting community across all industries is opposed to the Ellison amendment because it is a job killer, it will increase costs to taxpayers by reducing competition from contractors providing critical goods and services to the federal government, and such a draconian change in longstanding federal contracting rules will irreparably harm good companies attempting to comply with a complicated law.

**Again, ABC urges your opposition to this Ellison amendment and we will consider this a KEY VOTE for our 113th Congressional scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "G. H. B.", with a long horizontal flourish extending to the right.

Geoffrey Burr

Vice President, Government Affairs