



May 5, 2022

The Honorable Bernie Sanders  
Chairman  
U.S. Senate Committee on the Budget  
624 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham  
Ranking Member  
U.S. Senate Committee on the Budget  
624 Dirksen Senate Office Building  
Washington, DC 20510

Chairman Sanders, Ranking Member Graham and Members of the Committee:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 69 chapters representing more than 21,000 members, I write to express concerns with narratives prompting the U.S. Senate Budget Committee's hearing, "Should Taxpayer Dollars Go to Companies that Violate Labor Laws?"

Because ABC member contractors perform a significant amount of federal construction contracts,<sup>1</sup> ABC is troubled by misleading allegations at the heart of today's hearing at the expense of the rights and due process protections afforded to workers and employers awarded federal contracts.

In an April 26 letter to President Biden,<sup>2</sup> the chairman calls on the White House to issue an executive order that prevents companies that violate federal labor laws from contracting with the federal government. The letter irresponsibly cites a litany of allegations of *unadjudicated* labor violations by Amazon against its employees as the basis for such an action.

Blacklisting companies from government contracts based on mere allegations is a violation of due process and threatens to deprive the government and the citizens it serves of essential services provided by contractors. Doing so would also exacerbate existing supply chain problems, increase inflationary pressures and increase the potential for additional economic contraction. Moreover, courts have repeatedly held that it is unlawful for states and the executive branch to impose additional penalties related to labor matters outside those specified by Congress, including a U.S. Supreme Court decision that struck down attempts to link *adjudicated* violations of the National Labor Relations Act to government contracts.<sup>3</sup>

In addition, on Oct. 24, 2016, U.S. Department of Labor and FAR Council guidance and regulations implementing the Obama administration's controversial Fair Pay and Safe Workplaces Executive Order 13673,<sup>4</sup> commonly referred to as the Blacklisting Rule,<sup>5</sup> were blocked by a U.S. District Court for the Eastern District of Texas. The Blacklisting Rule required federal contractors to disclose and report violations and alleged violations of more than a dozen labor and employment laws and state equivalents by their company, subcontractors and material suppliers to federal agency labor advisers. These bureaucrats would then use this information to determine if a firm was responsible enough to receive a federal contract, circumventing existing statutory penalties,

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<sup>1</sup>During fiscal years 2009-2021, ABC member prime contractors won 57% of the value of federal construction contracts of \$25 million or more subject to President Obama's pro-PLA EO 13502. In total, ABC members have won 1,061 contracts (51%) valued at \$73.46 billion (57%) from fiscal years 2009-2021. See TheTruthAboutPLAs.com, [April 2022 Update: ABC's Fight Against Government-Mandated Project Labor Agreements Continues](#), April 6, 2022.

<sup>2</sup> See letter at [https://www.sanders.senate.gov/wp-content/uploads/Biden\\_DebarmentEO\\_Letter\\_042522.pdf](https://www.sanders.senate.gov/wp-content/uploads/Biden_DebarmentEO_Letter_042522.pdf)

<sup>3</sup> See *Wisconsin Dept. of Indus. v. Gould*, 475 U.S. 282 (1986).

<sup>4</sup> 79 Fed. Reg. 45309.

<sup>5</sup> 81 Fed. Reg. 58562.

suspension and debarment procedures and standards already required by Congress. The court ruled in favor of ABC's lawsuit and granted a preliminary injunction, after finding that the DOL and FAR rules were arbitrary and capricious, conflicted with the labor statutes themselves and violated contractors' constitutional rights.<sup>6</sup> Subsequently, Congress voted to disapprove the DOL and FAR's blacklisting regulation pursuant to the Congressional Review Act, P.L. 115-11, signed into law by President Trump.<sup>7</sup>

The CRA states that, once an agency rule is disapproved by Congress, such a rule may not be issued in "substantially the same form," unless it is expressly authorized by a subsequent law. A regulatory action pushing for a new Blacklisting Rule, even if narrowly tailored to firms that have been accused of violating the NLRA—as referenced in the chairman's letter—would most certainly run afoul of the CRA and be subjected to litigation and create additional uncertainty for federal contractors.

ABC strongly opposes any regulatory attempts to make labor law compliance a condition of winning federal contracts if it is not specifically prescribed by law. Congress has established federal labor laws that convey their own specific penalties for designated enforcement bodies to levy only after a violation is determined through the due process proceedings pursuant to the governing statute. Previous attempts to make labor law compliance a condition of winning a federal contracting marketplace have failed to adequately distinguish between mere allegations and adjudicated violations. Contracting officers simply do not possess the expertise to execute an additional procurement mandate on top of these well-established processes and alongside the respective statute's enforcement body, nor did Congress intend for them to do so.

ABC supports a level and transparent playing field for federal contractors and believes unethical firms should be held accountable. Bad actors who intentionally facilitate inequities in the federal procurement process are a detriment to taxpayers, contractors and employees whose livelihoods rely on a fair federal contracting marketplace. However, many federal contractors unwittingly violate unclear and confusing labor and employment laws and regulations and work to correct such violations and make employees whole, within the existing framework of the statutes established by Congress, once a violation is identified voluntarily or through the federal contracting process's system of checks and balances.

The chairman's letter, however, would create an instrument for malfeasance in federal procurement by providing opportunities for labor unions or market competitors to pursue frivolous filings of meritless labor charges against targets to secure a market advantage, manipulate a contract negotiation or influence an organizing campaign or union election vote. This would not only wrongfully harm a contractor's record, but also dilute the pool of rightful labor-related charges processed through the appropriate oversight body, subsequently hindering enforcement efforts against truly bad actors. This is a detriment to the workers who are afforded protection under the processes and procedures set forth in the federal labor laws Congress has established.

Finally, ABC is deeply troubled by the chairman's April 26 letter to President Biden, in which he asserts that Amazon has engaged in "illegal anti-union activity" that has no basis in actual adjudicated violations. The chairman's willful misrepresentation of what constitutes illegal activity demonstrates a flagrant disregard for the due process rights afforded to workers and employers and suggests that organized labor should be granted unchecked power over workplaces across the country.

Unfortunately, we've seen the chairman and his political allies exhibit similar sentiment by way of

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<sup>6</sup> *Associated Builders and Contractors of S.E. Tex. v. Rung*, 2016 U.S. Dist. LEXIS 155232 (Oct. 24, 2016).

<sup>7</sup> See <https://www.congress.gov/115/plaws/publ11/PLAW-115publ11.pdf>.

their support for the Protecting the Right to Organize Act. Despite its proponents' claims that the PRO Act will protect the ability of workers to join a union if they choose, the legislation will strip workers of their privacy, freedom and choice, and impose tremendous costs on small businesses and hardworking Americans at the benefit of organized labor.

The PRO Act has unsurprisingly been met with bipartisan resistance in Congress as well as an additional 280 organizations<sup>8</sup> representing the interests of tens of thousands of businesses and millions of employees. ABC is concerned that the chairman's April 26 letter and today's hearing are nothing more than attempts to circumvent Congress and encourage PRO Act policies by way of executive fiat.

ABC urges the committee to reject congressional or administrative attempts to blacklist firms from winning federal contracts without due process. We will also continue to express concern with lawmakers and others who equate mere allegations with actual adjudicated violations to achieve some political end at the expense of the rights and due process protections afforded to workers and employers.

Respectfully submitted,



Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs  
Associated Builders and Contractors

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<sup>8</sup> See Coalition for a Democratic Workplace letter to the Senate Health, Education, Labor and Pensions committee opposing the PRO Act, July 2021: <https://myprivateballot.com/wp-content/uploads/2021/07/CDW-PRO-Act-Senate-Hearing-Letter-July-2021.pdf>