



114th
Congress
Priority
Issues

Vol. 1



114th Congress Priority Issues

Vol. 1

TABLE OF CONTENTS

Key Staff Contacts	3
ABC and the Merit Shop Philosophy.....	4
Government-Mandated Project Labor Agreements (PLAs)	5
Davis-Bacon Act/Prevailing Wage.....	6
National Labor Relations Board (NLRB).....	7
“Persuader” Reporting Requirements	8
“Blacklisting” Fair Pay and Safe Workplaces	9
Energy/Environment.....	10
Estate Tax Repeal	11
Health Care	12
Immigration Reform	13
Independent Contractors.....	14
OSHA Reform	15
Regulatory Reform	16
Right to Secret Ballot Election.....	17
Right to Work.....	18
Salting Abuse	19
Tax Reform.....	20
Workforce Development	21

ABC NATIONAL

440 First St., NW, Ste. 200
Washington, D.C. 20001
(202) 595-1505

Geoff Burr

Vice President – Government Affairs
(202) 595-1801
Burr@abc.org

LEGISLATIVE

Kristen Swearingen

Senior Director – Legislative Affairs
(202) 595-1804
Swearingen@abc.org

Liam Donovan

*Director – Legislative and
Political Affairs*
(202) 595-1810
Donovan@abc.org

Drew Schneider

Director - Legislative Affairs
(202) 595-1812
Schneider@abc.org

Steve Rebillot

Director – Legislative Affairs
(202) 595-1806
Rebillot@abc.org

Ashleigh Davenport

Legislative Assistant
(202) 595-1811
Davenport@abc.org

POLICY/REGULATORY

Karen Livingston

Director – Policy
(202) 595-1805
Livingston@abc.org

Lauren Williams

Manager – Labor & Employment Policy
(202) 595-1815
LEWilliams@abc.org

Joey Hoellerer

Legal and Regulatory Affairs Assistant
(202) 595-1824
Hoellerer@abc.org

LABOR

Ben Brubeck

Director – Labor & Federal Procurement
(202) 595-1825
Brubeck@abc.org

STATE AND LOCAL AFFAIRS

Andy Conlin

Director – State and Local Affairs
(202) 595-1826
Conlin@abc.org

POLITICAL

Chris Singerling

Senior Director – Political Affairs
(202) 595-1813
Singerling@abc.org

Trip Stanford

Manager of Political Affairs & ABC PAC
(202) 595-1814
Stanford@abc.org

ABC and the Merit Shop Philosophy

THE VOICE OF THE MERIT SHOP

Associated Builders and Contractors (ABC) is a national construction industry trade association representing nearly 21,000 chapter members. Founded on the merit shop philosophy, ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically, profitably and for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors.

- ABC is the merit shop construction industry's voice with the legislative, executive and judicial branches of the federal government and with state and local governments, as well as with the news media.
- ABC's mission is the advancement of the merit shop construction philosophy, which encourages open competition and a free enterprise approach that awards contracts based solely on merit, regardless of labor affiliation.
- ABC's objective is to deal with issues on an industry-wide basis through its national office and chapters.
- ABC's activities include government representation, legal advocacy, education, workforce development, communications, technology, recognition through national and chapter awards programs, employee benefits, information on best practices, and business development through an online contractor search directory.

ABC was founded in 1950 when seven contractors gathered in Baltimore, Md., to create an association based on the shared belief that construction projects should be awarded on merit to the most qualified and responsible low bidders. The courage and dedication of those seven contractors helped to quickly spread the merit shop philosophy. Today, ABC is recognized as one of the leading organizations representing America's business community and the merit shop construction industry.

To learn more about ABC's history, goals and accomplishments, visit www.abc.org.

Government-Mandated Project Labor Agreements

OVERVIEW

Anti-competitive and costly government-mandated project labor agreements (PLAs) are special interest schemes that end open, fair and competitive bidding on contracts to build taxpayer-funded construction projects. Government-mandated PLAs discourage merit shop contractors from bidding on taxpayer-funded construction contracts and drive up costs between 12 percent and 18 percent, which results in fewer infrastructure improvements and reduced construction industry job creation.

ABC SUPPORTS

- The Government Neutrality in Contracting Act (H.R. 1671/S. 71), introduced by Rep. Mick Mulvaney (R-S.C.) and Sen. David Vitter (R-La.), which would codify into law language from President George W. Bush's Executive Orders 13202 and 13208.
- Legislative or executive measures to preserve full and open competition on public construction contracts requiring government neutrality regarding a contractor's use of a PLA.
- Federal construction contracts awarded based on sound and credible criteria, such as quality of work, experience and cost—not a company's union affiliation and willingness to execute a PLA.

ABC OPPOSES

- Government-mandated PLAs and discriminatory PLA preferences on federal and federally assisted construction projects.
- Claims by PLA proponents that government mandates and preferences for PLAs will improve the economy and efficiency in federal contracting.

BACKGROUND

A PLA is a project-specific collective bargaining agreement with multiple unions that is unique to the construction industry. The National Labor Relations Act permits construction employers to execute a PLA voluntarily, but when a PLA is mandated by a government agency, construction contracts can be awarded only to contractors and subcontractors that agree to the terms and conditions of the PLA.

Typically, PLAs force contractors to recognize unions as the representatives of their employees on a job; use the union hiring hall to obtain workers; hire apprentices exclusively through union apprenticeship programs; pay fringe benefits into union-managed benefits and multi-employer pension programs; and obey the unions' restrictive and inefficient work rules and job classifications. PLAs force employees to pay union dues, accept

unwanted union representation, and forfeit benefits earned during the life of a PLA project unless they join a union and become vested in union benefits plans.

On Feb. 6, 2009, President Obama issued Executive Order 13502, which strongly encourages federal agencies to require PLAs on a case-by-case basis on federal construction projects exceeding \$25 million in total cost.

The Obama administration also repealed former President George W. Bush's Executive Orders 13202 and 13208, which maintained government neutrality in federal contracting from 2001 to 2009 by prohibiting the government from requiring contractors to adhere to a government-mandated PLA as a condition of winning federal or federally assisted construction contracts.

Government-mandated PLAs discourage merit shop contractors from bidding on taxpayer-funded construction contracts and drive up costs between 12 percent and 18 percent.

In response to the threat of Obama administration PLA requirements, 19 states have enacted legislation or executive orders restricting PLA requirements and preferences on state and local projects since 2011. To date, a total of 22 states have measures similar to the Bush orders that guarantee fair and open competition on taxpayer-funded construction projects.

Contracts subject to government-mandated PLAs are special interest carve-outs designed to funnel work to favored unionized contractors and their unionized workforces, which represent just 13.9 percent of the U.S. private construction workforce, according to 2015 Bureau of Labor Statistics data.

PLA requirements and PLA preferences on taxpayer-funded contracts expose procurement officials to intense political pressure, disrupt local collective bargaining agreements, stifle competition, create contracting and construction delays, and prevent taxpayers from receiving the best possible construction product at the best possible price.

OVERVIEW

The Davis-Bacon Act is an 80-year-old wage subsidy law administered and enforced by the U.S. Department of Labor (DOL) that mandates so-called “prevailing” wages for work performed on federally financed construction projects. Davis-Bacon hinders economic growth, increases the federal deficit, imposes enormous burdens that stifle contractor productivity, ignores skill differences for different jobs, and imposes rigid craft work rules.

ABC SUPPORTS

- Repeal of the Davis-Bacon Act.
- Legislative and regulatory efforts designed to improve federal wage determinations and limit the negative impacts of DOL's current policy.

ABC OPPOSES

- Unequal access to work opportunities. Davis-Bacon prevents many qualified small merit shop contractors from bidding on publicly funded projects.
- Waste, fraud and abuse. Davis-Bacon sets artificial wages and restricts competition, resulting in billions of dollars being unnecessarily added to the cost of public works projects.
- Expansion of the Davis-Bacon Act into areas of public and private projects in which it previously has not been mandated.

BACKGROUND

The Government Accountability Office (GAO) has repeatedly criticized DOL's Davis-Bacon wage determination process for its lack of transparency in how the published wage rates are set, as well as its tendency to gather erroneous data through unscientific wage surveys. DOL's responses to these and other independent government reports have been dismissive at best, and demonstrate that the agency is incapable of administering and enforcing the Davis-Bacon Act in a fair and reasonable manner.

Despite years of low union density in the construction industry, DOL's flawed wage survey process somehow mandates union wage rates more than 60 percent of the time. These wage

determinations force federal contractors to use outdated and inefficient union job classifications that ignore the productive work practices successfully used in the merit shop construction industry.

Davis-Bacon also fails to provide equal access to work opportunities because complexities and inefficiencies in the act's implementation make it nearly impossible for many qualified small merit shop firms to competitively bid on publicly funded projects. These businesses are at an even greater disadvantage due to low net profit margins and high unemployment facing the industry.

Despite years of low union density in the construction industry, DOL's flawed wage survey process somehow mandates union wage rates more than 60 percent of the time.

DOL's mishandling of the Davis-Bacon wage determination process is not just bad for construction—it's bad for taxpayers as well. The Congressional Budget Office has estimated that the Davis-Bacon Act will raise federal construction costs by \$13 billion between 2015 and 2023.

In addition to advocating for repeal of the Davis-Bacon Act, ABC has made numerous recommendations over the years that could have mitigated some of the act's damage to the economy. However, despite repeated criticisms from GAO and DOL's Office of Inspector General, the agency has implemented few, if any, meaningful reforms in its administration of the act since the early years of the Reagan administration.

OVERVIEW

The five-member National Labor Relations Board (NLRB) is tasked with interpreting and enforcing the National Labor Relations Act (NLRA). The agency is supposed to serve as a neutral arbiter of federal labor law, but under the Obama administration it has promoted the narrow policy goals of politically powerful unions.

ABC SUPPORTS

- Balanced policies that reflect the NLRB's original mission to fairly interpret and enforce federal labor law.
- Legislation that preserves longstanding union election procedures by safeguarding the right of workers to make informed decisions about union representation, ensuring the ability of employers to communicate with their employees, and protecting the privacy of workers and their families.

ABC OPPOSES

- The NLRB's final rule that implements "ambush" style union representation elections. Such policies unfairly obstruct and silence employers while violating workers' privacy and depriving them of valuable information.
- Any efforts by the NLRB to redefine who qualifies as a "joint employer" under the NLRA.
- Any efforts by the NLRB to overturn balanced precedent or implement anti-employer policies and rulemakings.

BACKGROUND

Under the Obama administration, the NLRB has issued controversial, anti-business rulemakings seeking to promote union organizing in the construction industry and elsewhere at the expense of employers and employees. In addition, the NLRB has aggressively expanded its enforcement authority and issued dozens of precedent-reversing legal decisions impacting construction workplaces—including decisions on banner, salting and other troubling union tactics. The NLRB's radical agenda tramples both employer and employee rights.

Most notably, the NLRB finalized its controversial "ambush" elections rule (currently being challenged in two circuit courts). The rule significantly changes the union representation election process by reducing the amount of time between when a union files a representation petition and an election takes place from a median of 38 days to as few as 10 to 14 days. The rule also seeks

The NLRB has aggressively expanded its enforcement authority and issued dozens of precedent-reversing legal decisions impacting construction workplaces—including decisions on banner, salting and other troubling union tactics.

to "streamline" the process by deferring or eliminating long-held employer rights. In addition, the rule requires employers to hand over their employees' names, home addresses, phone numbers, email addresses, work locations, shifts and job classifications to union organizers.

The NLRB "ambush" elections final rule will work hand-in-glove with the U.S. Department of Labor's pending "persuader" rule, which ABC also opposes. Together, these two rules could achieve a primary objective of the deceptively named Employee Free Choice Act by forcing labor neutrality on employers.

On May 12, 2014, the NLRB issued an invitation to the public to file amicus briefs in the *Browning Ferris Industries* case on whether the Board should revisit its 30-year-old joint employer standards. The unprecedented changes the Board is considering would redefine who qualifies as a "joint employer" under the NLRA, potentially imposing unnecessary barriers to and burdens on the contractor and subcontractor relationship throughout the construction industry. Contractors may find themselves vulnerable to increased liability—making them less likely to hire subcontractors, most of which are small businesses, to work on projects.

If left unchecked, NLRB actions will further jeopardize economic recovery and profoundly impact millions of American employers and their employees. It is imperative that Congress works to restore much-needed balance to the workplace.

“Persuader” Reporting Requirements

OVERVIEW

The U.S. Department of Labor (DOL) plans to finalize a new rule designed to eviscerate employers’ rights to free speech, freedom of association and legal counsel. Known as the “persuader” rule, this pending change will have a profound chilling effect on labor relations advice for employers, and in turn deprive employees of their right to obtain balanced information about union representation.

ABC SUPPORTS

- The preservation of the long-held and current interpretation of Section 203(c) “advice exemption” provision in the Labor-Management Reporting and Disclosure Act (LMRDA).
- Legislative efforts to block DOL from implementing its proposed “persuader” reporting rule.

ABC OPPOSES

- Finalization and implementation of DOL’s “persuader” reporting rule.
- Any current or future policy or regulation that deprives employees of valuable, balanced information regarding the union representation process by obstructing employers’ ability to communicate with them about union organizing.

BACKGROUND

In June 2011, DOL announced plans to fundamentally redefine “persuader” activity under Section 203 of the LMRDA.

Traditionally, persuader activity has been defined as services provided by third parties (known as persuaders) hired by employers to communicate directly to employees about labor issues. For decades, persuaders and their employer clients have been obligated to file public financial reports with DOL, but indirect, privileged communication and other forms of advice provided to an employer by a third party (often an attorney) has been exempt, under Section 203(c) of the LMRDA.

If implemented, DOL’s persuader proposal will greatly restrict employers’ relationships with their labor relations advisors.

Actions that previously were considered to be advice will be deemed persuader activity—forcing third-party advisors to disclose financial relationships with each of their labor relations clients or face criminal charges. Newly minted “persuaders” will be reluctant to offer what previously constituted advice due to the unreasonable burdens that could be placed on them and their other clients. Meanwhile, employers will be discouraged from using outside legal assistance at all.

DOL’s proposal guts the underlying statute’s protection of attorney-client privilege, improperly restricts advice, blurs the line defining true persuasion and conflicts with ethical rules. It runs contrary to the congressional intent behind the LMRDA, and is not supported by any compelling justification for such drastic changes.

It is essential that employers in the construction industry retain the ability to receive expert counsel, and that employees get all the facts about union representation.

The proposal also works hand-in-glove with the National Labor Relations Board’s “ambush” elections final rule, which ABC strongly opposes. Together, these two rules could achieve a primary objective of the deceptively named Employee Free Choice Act by forcing labor neutrality on employers.

It is essential that employers in the construction industry retain the ability to receive expert counsel, and that employees get all the facts about union representation.

“Blacklisting” Fair Pay and Safe Workplaces

OVERVIEW

President Obama’s Executive Order (EO) 13673, known as the “Blacklisting” EO because it could prevent some federal contractors from winning future federal contracts, will discourage qualified large and small businesses from pursuing federal contracts, threaten the livelihood of millions of Americans and increase costs to taxpayers.

ABC SUPPORTS

- Congress, the administration, federal procurement officers and stakeholders working together to develop a balanced approach to creating and implementing any reforms to the federal contracting procurement process.
- Safeguards for fair and transparent competition and protections against subjectivity and corruption in federal contracting.
- Federal agencies awarding contracts based on merit to firms that can deliver the highest quality product at the best price.

ABC OPPOSES

- Federal contractors who repeatedly and intentionally break federal labor and contracting laws and regulations.
- Executive Order 13673 and any executive order, legislation or regulation that would deny federal contractors due process and permit or encourage discrimination in federal contracting based on arbitrary criteria, pre-adjudicated and/or false accusations, or a contractor’s labor affiliation.
- Any executive order, legislation or regulation that could discourage competition and delay federal construction projects by adding new levels of costly and time-consuming bureaucratic red tape to the federal contracting process.

BACKGROUND

On July 31, 2014, President Obama issued The Fair Pay and Safe Workplaces EO 13673, which creates a sweeping regulatory scheme on federal contractors that will disrupt the federal procurement process, significantly increase red tape and costs for both government and industry, and serve as a barrier to federal contracting for many businesses.

The EO instructs federal agencies to determine whether businesses seeking federal contracts are “responsible” enough to be awarded a contract based on a subjective review of its three-year compliance history with 14 federal and equivalent state labor, employment and safety laws. The EO could result in some of the best federal contractors being arbitrarily blacklisted

from winning future federal contracts for committing even minor violations of a rapidly growing and constantly changing labyrinth of workplace laws and regulations. Even the federal government has a difficult time complying with the laws consistently.

Flouting Congressional authority, the EO disregards existing statutory enforcement powers found in the Federal Acquisition Regulation (FAR) and various labor laws. In addition, the EO imposes new and redundant data collection, review, inter-agency consultation and enforcement procedures. The EO also unfairly restricts the ability of employers to use arbitration to resolve employee disputes in certain circumstances (Federal law and subsequent Supreme Court decisions have made clear these arbitration agreements are acceptable).

Executive Order 13673 adds uncertainty and subjectivity to the government contracting process and likely will increase the frequency and cost of labor and employment disputes.

While the full effect of the blacklisting EO won’t be known until more detailed regulations are finalized, there is great concern that the livelihoods of federal contractors and their employees could be jeopardized based on the subjective decisions of a team of new unelected bureaucrats (Agency Labor Compliance Advisors) who will be charged with judging federal contractors’ compliance records and advising federal agency contracting officers.

Many have expressed concern that this EO could be used to reward political allies with contracts while blacklisting political foes. Such high stakes open the door to corruption and favoritism in the procurement process, allow trial lawyers to extort larger settlements from firms, enable bureaucratic agencies to extract costly settlements for conduct that may have been legal, and give labor unions leverage to get businesses to capitulate to their demands.

Taxpayers, contractors and their employees deserve a fair and transparent process that will award contracts based on merit to firms that can deliver the highest quality product at the best price. Instead, the EO 13673 adds uncertainty and subjectivity to the government contracting process and likely will increase the frequency and cost of labor and employment disputes.

OVERVIEW

ABC is troubled by the Obama administration's energy and environmental policy actions, which have been moving forward—without Congressional approval—via regulation and other administrative methods. The U.S. Environmental Protection Agency (EPA) has brazenly pursued costly and burdensome regulations without regard for the grave implications they will have on American businesses and their employees.

ABC SUPPORTS

- Decreasing America's dependence on foreign sources of energy by increasing domestic exploration and production of fossil fuels.
- Allowing responsible oil and gas development offshore and in the Arctic National Wildlife Refuge.
- The development of oil shale technology and the construction of new refineries, along with new and sustainable energy sources.
- New construction and upgrades to power plants and transmission infrastructure (e.g., pipelines) built with open competition and without government-mandated project labor agreements.

ABC OPPOSES

- The EPA overstepping its statutory authority.
- Any federal regulatory actions that would impede the unconventional oil and gas boom.
- The EPA and U.S. Army Corps of Engineers final rule, which aims to clarify the definition of "Waters of the U.S." The rule significantly expands the scope of federal authority over water and land uses across the country.

BACKGROUND

The commercial construction industry has a unique interest in energy policy, as it represents not only a large-scale energy consumer, but also acts as a key facilitator of domestic energy exploration, production and transportation. Furthermore, construction employs more than six million Americans who bear the brunt of fluctuating prices at the pump and in their homes.

ABC believes alternative/renewable energy sources are vital to America's future; however, the implementation of such sources will only succeed when coupled with measures designed to reduce U.S. dependence on foreign sources of energy. These measures include increased domestic exploration and production of fossil fuels, as well as responsible deepwater drilling.

The U.S. Environmental Protection Agency (EPA) has brazenly pursued costly and burdensome regulations without regard for the grave implications they will have on American businesses and their employees.

ABC opposes federal actions to halt or limit unconventional oil and gas extraction and transportation, which would increase the cost of energy across the United States and contribute to job loss in the construction industry. The unprecedented oil shale development of the past decade has buoyed construction activity through the deepest recession and softest recovery in recent history. As many American households and businesses struggle to make ends meet, an increase in the cost of gasoline prices and energy will impact corporate and family budgets alike.

ABC also is concerned about the increased regulatory burdens under the Clean Water Act, Toxic Substances Control Act and Clean Air Act. ABC will continue to advocate for a comprehensive energy policy and oppose any actions that would destroy American jobs and increase the cost of energy across the United States.

OVERVIEW

Construction companies are overwhelmingly small, family-owned and closely held businesses, and thus are particularly susceptible to the estate tax burden given the capital-intensive, illiquid nature of the industry. Due in large part to the estate tax, more than 70 percent of family businesses do not survive to the second generation, and 90 percent fail to see the third generation. According to the Small Business Administration, 77 percent of failed family businesses enter into bankruptcy following the death of the founder. The estate tax not only jeopardizes the survival of family-owned construction companies, but it also siphons critical funds that could be invested back into the business. ABC applauds the recent vote by the House of Representatives to repeal the estate tax and urges the Senate to follow suit.

ABC SUPPORTS

- Full repeal of the estate tax (“death tax”).

ABC OPPOSES

- Any attempt to raise the current rate of 40 percent or lower the exemption from \$5 million.
- Repeal of “stepped-up basis,” which would effectively create a second death tax on phantom profits.

BACKGROUND

When the owner of a construction company dies, the value of the company is added to the owner’s estate and taxed after exemptions. The estate tax, also known as the “death tax,” places a significant burden on future generations of family business owners, as well as their employees, customers and suppliers. Small, family-owned construction companies are particularly hard hit by the death tax because the value of these businesses is not in liquid assets.

The estate tax yielded \$19.3 billion to the federal treasury in 2014, but is most likely revenue-neutral when the full impact of closing a business is considered. Multiple studies project that repeal of the estate tax would create more than 100,000 jobs, and would eventually result in a net increase to federal coffers. At less than 1 percent of annual federal revenue, ABC believes the death tax is hardly worth the devastation it causes to family-owned construction businesses.

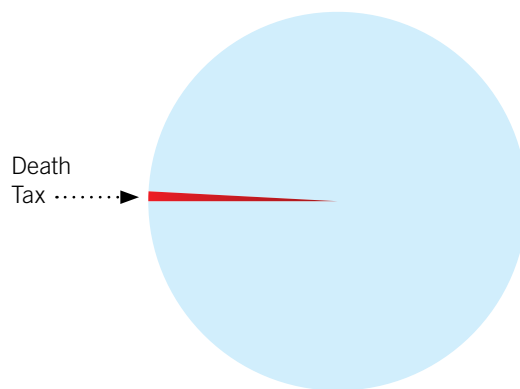
With the return of the estate tax after its one-year repeal in 2010, the immediate concern was the looming threat of a punitive 55 percent rate paired with a diminished \$1 million

exemption, and the sustainability of temporary deals to keep this underlying policy at bay. Congress ultimately compromised with a permanent 40 percent rate paired with a portable \$5 million exemption, leaving a relatively high levy on a comparatively narrow base of inheritors. While this deal lent business owners the statutory certainty required to make appropriate plans for family succession, no sooner had this legislation been passed than the Obama administration began looking to squeeze more money out of the deal.

Most recently, in the FY2016 White House budget, the president proposed the repeal of so-called “stepped-up basis,” subjecting growth occurring under the decedent to a second level of tax at the ultimate time of sale. This policy would take the 40 percent estate tax rate, already fourth highest in the industrialized world, and effectively compound it into a 60 percent tax on inherited capital gains. ABC will continue to monitor any action by the administration and Congress on this issue.

Family-owned businesses are the backbone of the U.S. economy and give Americans a sense of pride and accomplishment. In the construction industry, they provide valuable jobs and play an integral role in building communities. ABC believes these businesses are worth preserving for the next generation.

Federal Revenue (\$3 trillion)



At less than 1 percent of annual federal revenue, ABC believes the death tax is hardly worth the devastation it causes to family-owned construction businesses.

OVERVIEW

Providing quality health care benefits is a top priority for ABC and its member companies. ABC continues to call on Congress to advance common-sense health care solutions that will provide greater choice and affordability.

On March 23, 2010, President Obama signed into law the massive health care law, known as the Affordable Care Act (ACA). Five years later, the Obama administration has faced dozens of lawsuits challenging the legality of certain provisions in the ACA, issued thousands of pages of complex regulations implementing the law, and struggled to sufficiently educate businesses about the law's employer provisions. The ACA continues to create uncertainty and confusion in the construction industry, making it difficult for the nation's contractors to plan for the future and create jobs.

By forcing employers to offer government-prescribed health insurance, ABC members will no longer have the choice or flexibility to structure health care coverage options that meet the needs of their fluctuating workforce.

ABC SUPPORTS

- Allowing Americans to buy insurance across state lines, as the unique nature of construction work demands that benefits be portable.
- Raising the self-employed health care deduction to 100 percent and maintaining the tax deductibility of health insurance premiums for all employers.
- Small Business Health Plans that give small businesses the power to pool together to offer health care at lower prices—something many labor unions already are permitted to do.
- Health Savings Accounts (HSAs), which are tax-free savings accounts for medical expenses that allow more small business owners to obtain affordable health coverage for themselves and their employees.
- Flexible Spending Accounts (FSAs) or “cafeteria plans,” which allow employees to set aside money (pre-tax) each year to be used for medical expenses such as co-pays, deductibles and services not covered under their base insurance plan.

- Enacting medical malpractice reform, which would dramatically decrease the cost of health insurance.

ABC OPPOSES

- Federal government mandates that force employers to offer a certain level of health care coverage or be subject to penalties.
- Tax increases included in the ACA that will continue to hinder reinvestment and job creation in the construction industry.

BACKGROUND

Generally, under the employer mandate provisions of the ACA, employers with 50 or more full-time employees or full-time equivalents must offer a certain level of coverage to full-time employees or be subject to penalties. The increased costs related to this onerous mandate continue to be of significant concern to ABC members.

The ACA defines a full-time employee as working at least 30 hours per week each month (or 130 service hours monthly). Instead of using the traditional definition of 40 hours per week for full-time employment (as defined in employment statutes and regulations), the Obama administration has decided to change the definition to a rigid 30 hours per week. Under the ACA's current 30-hour rule, many employers will be forced to reduce employee work hours and wages. ABC supports increasing the threshold to 40 hours per week in order to avert market disruptions and restore flexibility to employers and workers alike.

By forcing employers to offer government-prescribed health insurance, ABC members will no longer have the choice or flexibility to structure health care coverage options that meet the needs of their fluctuating workforce. The resulting increased costs will jeopardize the ability of ABC member companies to maintain affordable coverage options for their employees and will force some to drop coverage altogether.

In addition to the costly employer mandate, the ACA includes the health insurance premium tax (HIT). Under the HIT, a fee will be assessed on health insurance companies—almost all of which will be passed onto consumers in the fully insured marketplace, where nearly all small businesses and the self-employed purchase their coverage. The HIT will result in the collection of \$101.7 billion in the first 10 years.

ABC urges Congress to repeal the health care law, as it has only served to hurt employers and increase premiums for millions of Americans.

OVERVIEW

As the economy continues to recover, construction firms will face a shortage of qualified workers and craft professionals. Unfortunately, current immigration laws do not provide an adequate amount of legal immigration to respond to the future economic demands of the construction industry.

Any successful reform measure must work to ensure the enforcement of our laws, security of our borders and prosperity of our economy. Immigration reform will fail without a channel allowing willing and essential foreign workers the opportunity to work legally in this country.

ABC SUPPORTS

- Establishing a temporary guest worker program that would allow non-U.S. citizens to apply for the right to work legally in this country for multi-year renewable terms when an appropriately skilled and willing American worker is not available.
- Safe harbor provisions against prosecuting and penalizing employers that act in good faith while using employment verification (E-Verify) to verify employees.
- Federal preemption of state and local E-Verify laws.
- A more streamlined and efficient pathway to legal status.
- Improvements to border security and the stricter enforcement of immigration laws.

ABC OPPOSES

- Including “prevailing wage” requirements under the Davis-Bacon Act in any temporary guest worker program.
- Any temporary guest worker program that has an additional set of rules, restrictions or limitations for the construction industry.
- “Cross-liability” provisions that force employers to be accountable for the employment verification of workers of other employers with which they have contracts, subcontracts or other forms of exchange.

According to the Bureau of Labor Statistics, the construction industry is expected to need about 1.6 million new workers by 2022.

BACKGROUND

The key fatal flaw of the 1986 Immigration Reform and Control Act was its failure to provide a legal immigration program that could respond to labor market demand in times of both high and low unemployment. According to the Bureau of Labor Statistics, the construction industry is expected to need about 1.6 million new workers by 2022. In order to meet U.S. construction demand, there must be a way for the industry to legally supplement its workforce when there are not a sufficient number of willing or able American workers.

An effective guest worker program is not only an economic issue, but also plays an important role in securing our border. When legal immigration vehicles are able to meet labor force demands, a truly secure border becomes a more realistic and achievable goal.

In addition, employers need an efficient, practical and accurate E-Verify system that provides liability protection for compliant businesses. Currently, E-Verify is limited to the employment eligibility of newly hired employees. As of Sept. 8, 2009, the federal government requires use for federal solicitations and contract awards; however, Congress has not mandated the use of E-Verify for all employers.

OVERVIEW

Independent contractors are an important part of the construction industry due to its fluctuating work demands, and they often are the answer to a pressing demand for the special skills and know-how required for short-term projects.

Any independent contractor reform effort must recognize that independent contractors are necessary, productive participants in the construction industry, and their ability to contribute to the marketplace must be preserved.

ABC SUPPORTS

- Efforts to provide a clear, concise and reasonable definition of independent contractors.
- Preservation of Section 530 of the Revenue Act of 1978, which provides a safe harbor for many businesses utilizing independent contractors.

ABC OPPOSES

- Any proposals to repeal Section 530 of the Revenue Act of 1978.
- Any proposals that would impede the flexibility of employers to utilize independent contractors.
- Any current or future policy or regulation that would require employers to generate burdensome classification analyses regarding workers' status under the Fair Labor Standards Act (FLSA). Such a requirement would merely serve as an enforcement tool and fuel frivolous litigation.
- Any legislative proposals that would curb legitimate use of independent contractors by requiring federal income tax withholding on payments made to independent contractors.

Any independent contractor reform effort must recognize that independent contractors are necessary, productive participants in the construction industry.

BACKGROUND

Determining whether a worker is an employee or an independent contractor often is difficult. Internal Revenue Service (IRS) and state guidelines for classifying workers as independent contractors are often ambiguous and inconsistent. When the IRS or a state agency rules an employer incorrectly classified an employee as an independent contractor, the employer may be liable for thousands of dollars in fines, back-taxes and benefits.

Companies must be able to make good faith, reasonable decisions about the classification of individuals as employees or independent contractors without fear of misclassification or penalty from the IRS. Section 530 of the Revenue Act of 1978 created a safe harbor provision that provides an employer with some protection from liability for accidental misclassification if the employer acted with a reasonable basis and treated workers consistently. Over the years, several legislative proposals sought to eliminate the Section 530 safe harbor. ABC opposes these efforts.

The Obama administration has expressed an interest in promulgating a rulemaking referred to as "Right to Know," in which employers would be required to provide workers classified as independent contractors with individualized, written "classification analyses" that detail their classification under the FLSA. In addition, employers would be required to provide written justification for workers' status as exempt/non-exempt on a rolling basis. ABC is concerned that such a complex rulemaking would significantly burden employers, serve merely as an enforcement tool, and increase the number of FLSA lawsuits related to exemption and misclassification issues. The rule was listed in the "Long-Term Action" section of the most recent regulatory agenda, which ABC will continue to monitor.

OVERVIEW

Exceptional jobsite safety and health practices are inherently good for business. Unfortunately, the anti-employer agendas of some members of Congress, and the Occupational Safety and Health Administration's (OSHA) emphasis on over-zealous enforcement along with burdensome and unnecessary rulemakings, are eroding the potential for successful, collaborative efforts with employers to make workplaces safer.

ABC SUPPORTS

- Meaningful, constructive oversight of OSHA's regulatory and enforcement agendas.
- Ensuring that new and existing OSHA standards are as practical, performance-oriented and cost-effective as possible.
- Restructuring the Occupational Safety and Health Act (OSH Act) to codify collaborative approaches to education, training and technical assistance.
- Fair and responsible inspection and enforcement policies, regardless of labor affiliation.
- Any legislative efforts to block OSHA from implementing its burdensome and unnecessary rulemakings.

ABC OPPOSES

- Any current or future policy or regulation changing existing standards for workplace silica exposure until OSHA can demonstrate such changes are necessary and workable. ABC opposes OSHA's proposed silica rule.
- OSHA's current rulemaking that would require electronic submission and publication of injury and illness records without context.
- Any current or future policy or regulatory action that allows union organizers to represent nonunion workers during OSHA inspections and enforcement actions.
- Any current or future policy or regulation that is contrary to the *Volks* decision and changes the employer's obligation to record an injury.
- Any legislation introducing anti-employer provisions to the OSH Act.

BACKGROUND

ABC strongly believes OSHA should view employers as partners in achieving safer workplaces. Unfortunately, the agency continues to take actions that threaten to impose excessive and burdensome costs that could impact job creation, stifle industry growth and offer little in return in terms of worker safety.

ABC has expressed concerns about many of OSHA's policies and regulatory proposals, including its unnecessary and impractical changes to workplace silica rules; new requirements to submit safety records to OSHA that will be posted on the internet; and OSHA's policy of allowing outside union agents to accompany agency inspectors into nonunion workplaces.

ABC believes a more inclusive, fair and reasonable approach to achieving and maintaining safe and healthy workplaces is needed. The construction industry will benefit from workplace safety legislation and regulations that implement results-based solutions, increase compliance in a collaborative way and are consistently enforced.

ABC believes a more inclusive, fair and reasonable approach to achieving and maintaining safe and healthy workplaces is needed.

OVERVIEW

In 2014, the federal government imposed \$181.5 billion in regulatory costs on the American people, including proposed and final rules, requiring approximately 10 billion hours of paperwork. Many of these regulations have been or will be imposed on the construction industry. ABC is committed to reforming the broken federal regulatory process and ensuring industry stakeholders' voices are heard and rights are protected.

ABC SUPPORTS

- Comprehensive regulatory reform should include across-the-board requirements for agencies to evaluate the risks, weigh the costs and assess the benefits of regulations. This will better allocate limited resources and target efforts toward achieving the construction industry's collective environmental, health and safety goals.
- Periodic review of regulations to ensure they are necessary, current and cost-effective. The construction industry should not be forced to operate according to burdensome, unjustified, outdated or inappropriate rules.
- Legislation that would reform the Administrative Procedure Act by strengthening existing checks on federal agencies. This would foster more cost-effective regulations through a more transparent process.
- Legislation that would require federal agencies to more closely examine regulatory impacts on small businesses.
- Legislation that would enhance openness and transparency in the regulatory process by requiring early disclosure of proposed consent decrees and regulatory settlements. Agencies should be required to solicit public comment prior to entering into consent decrees with courts. This would give affected parties proper notice of proposed regulatory settlements and make it possible for affected industries to participate in the actual settlement negotiations.
- Legislation that would streamline the current process for developers and contractors to obtain federal environmental permits and approvals. This would prevent jobs from being deferred or never being created because of dysfunctional permitting processes.

In 2014, the federal government imposed \$181.5 billion in regulatory costs on the American people, including proposed and final rules, requiring approximately 10 billion hours of paperwork.

ABC OPPOSES

- Unnecessary, burdensome and costly regulations resulting from the efforts of Washington bureaucrats who have little accountability for their actions.
- Sub-regulatory, "de facto" rulemaking, in which regulatory provisions are proposed as guidance or administrative interpretations in an effort to circumvent federal rulemaking procedures and avoid stakeholder participation.

BACKGROUND

The Obama administration continues to issue rulemakings that detrimentally impact the construction industry. In some cases, these regulations are based on conjecture and speculation, lacking foundation in sound scientific analysis. For the construction industry, unjustified and unnecessary regulations translate to higher costs, which are then passed along to the consumer or lead to construction projects being priced out of the market. This chain reaction ultimately results in fewer projects, and hinders businesses' ability to hire and expand.

ABC members understand the value of standards and regulations when they are based on solid evidence, with appropriate consideration paid to implementation costs and input from the business community.

Federal agencies must be held accountable for full compliance with existing rulemaking statutes and requirements when promulgating regulations to ensure they are necessary, current and cost-effective for businesses to implement.

OVERVIEW

Currently, the preferred method for determining whether employees want union representation is a secret ballot election overseen by the National Labor Relations Board (NLRB).

The NLRB follows strict procedures to ensure a fair election, free of employer and union coercion. Under current law, employers are prohibited from making threats of reprisal or force and from promising benefits that might interfere with an election. If employers engage in such conduct and their behavior disrupts election conditions, the NLRB may order the employer to bargain with the union, even if the union lost the election.

If a union enjoys a majority of employee support, current law allows employers to waive the secret ballot election requirement and recognize a union that produces signed union authorization cards from more than 50 percent of the employees.

All workers, in every industry, deserve the fundamental American right to a federally supervised secret ballot election. This right is guaranteed when voting in political elections; there is no reason it should be surrendered in the workplace.

ABC SUPPORTS

- Legislation that would guarantee the right of every worker to a secret ballot vote on decisions regarding union representation.

ABC OPPOSES

- Any effort to overturn or diminish NLRB procedures that protect the rights of employees to fair union elections through secret ballot voting.

All workers, in every industry, deserve the fundamental American right to a federally supervised secret ballot election.

BACKGROUND

In the 111th Congress, labor unions unsuccessfully attempted to permanently deprive workers of their right to a secret ballot election through the deceptively named Employee Free Choice Act (EFCA), also referred to as “card check.”

EFCA, which ABC vigorously opposed, would have fundamentally tilted the playing field in favor of union organizing by effectively eliminating secret ballot elections as a method of determining whether employees want a union. Instead, it would require an employer to recognize a union in all cases based on a mere check of authorization cards that unions would collect from employees. The card-signing process would have none of the protections offered by secret ballot elections, and employees could be subjected to coercion, peer pressure and threats, as well as a process that invites fraud.

Although EFCA has failed to move in Congress, the Obama administration is forcing increased use of card check onto the workforce through the NLRB and U.S. Department of Labor. ABC and its member companies will continue to oppose any actions that would take away American workers’ rights to a secret ballot election.

OVERVIEW

The 1947 Taft-Hartley Act allows state governments to determine whether workers can be forced to join a union, or pay union dues or fees, as a condition of employment. Right to Work laws guarantee workers can seek employment without fearing they will be required to join (or pay) a union if they are hired.

Currently, twenty-five states have adopted Right to Work laws. Most recently, Wisconsin adopted a Right to Work law in 2015.

ABC SUPPORTS

- The right of all individuals to work without having to join a union, or pay union dues or fees, as a condition of employment.

ABC OPPOSES

- Any federal or state laws that require workers to join a union, or pay union dues or fees, as a condition of employment or as a condition of participating on a construction project procured by a federal, state or local government entity.

BACKGROUND

The purpose of Right to Work laws is not to eliminate unions, but rather to guarantee basic fairness for workers. Right to Work laws ensure workers have an opportunity to choose whether union representation makes sense for them. If all or most of the members of a bargaining unit believe union representation will advance their interests, then nothing in a Right to Work law inhibits them from exercising their federally protected right to organize a union and collectively bargain with their employer. Right to Work laws simply allow workers who do not want to participate in the union to opt out of joining the union or paying dues or fees.

Many state leaders believe Right to Work laws could be a key to jumpstarting economic growth in the wake of the recession. Economic growth in Right to Work states often outpaces growth in states where workers are forced to join a union or pay a fee to organized labor as a condition of employment. For example,

The purpose of Right to Work laws is not to eliminate unions, but rather to guarantee basic fairness for workers. Right to Work laws ensure workers have an opportunity to choose whether union representation makes sense for them.

the Bureau of Labor Statistics reports private sector employment grew 5.2 percent faster (2003-2013) in Right to Work states than in their non-Right to Work counterparts. Additionally, the Department of Commerce reports real gross domestic product growth in manufacturing increased 11.8 percent faster (2002-2012) in Right to Work states than in non-Right to Work states. While some say these economic gains come at the expense of workers' wages, Department of Commerce data show per capita disposable personal income in 2013 (adjusted for cost of living) was higher in Right to Work states than the national average and higher than non-Right to Work states.

Opponents of Right to Work laws claim the lack of compulsory unionization leads to a "free rider" problem in which unions must represent all workers in the bargaining unit, so workers who choose not to pay union fees are given free representation. This argument fails to recognize the right of organized labor to negotiate member-only contracts, or to simply not represent those who choose not to join the union. Unions dislike these types of contracts because they allow individual workers to negotiate their own employment agreements with management; not representing all workers in the bargaining unit reduces the union's leverage against the employer.

OVERVIEW

“Salting” abuse is the intentional placement of trained union professional organizers and agents in a merit shop facility to harass and/or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business.

ABC SUPPORTS

- Legislation that would amend the National Labor Relations Act (NLRA) to make it clear that an employer is not required to hire any person who seeks a job primarily to organize employees or put nonunion companies out of business, or do both. This change would not infringe on any rights or protections otherwise afforded to employees under the NLRA. It would alleviate the legal pressures imposed on employers to hire individuals whose overriding purpose for seeking a job is to disrupt the workplace or otherwise inflict economic harm.

ABC OPPOSES

- Union salting procedures that drive up costs for targeted merit shop construction companies. In defending themselves against false and frivolous charges, employers incur thousands of dollars in legal expenses, delays and lost work hours.

BACKGROUND

Salting is not merely an organizing tool—it has become an instrument of economic destruction aimed at nonunion companies. Unions send their agents into merit shop workplaces under the guise of seeking employment. Hiding behind the shield of the NLRA, these “salts” often try to destroy their employers or deliberately increase costs through various actions, including workplace sabotage and frivolous discrimination complaints with various agencies.

Frivolous salting charges cost companies significant time, money and resources, and prevent employers from hiring more employees, investing in better equipment, and securing more work to grow the company and provide additional jobs in the community.

ABC will continue to work with the House Education and the Workforce Committee and the Senate Health, Education, Labor and Pensions Committee to educate Congress about the detrimental impacts of union salting.

In defending themselves against false and frivolous charges, employers incur thousands of dollars in legal expenses, delays and lost work hours.

OVERVIEW

While the U.S. corporate tax rate stands among the highest in the industrialized world, three quarters of construction businesses are subject to the individual rate, which remains higher still. Some in Washington, including President Obama, have proposed reforms chiefly concerned with lowering the corporate rate, despite the fact that C-corps make up just 5 percent of business entities and account for less than half of all private sector employees. Not only would a corporate-only reform fail to provide relief for tens of millions of small businesses, it would in fact amount to a significant effective tax hike, as broadly shared credits and deductions are eliminated to finance a corporate rate cut. Instead of widening the existing gap between Main Street and the Fortune 500, Congress must enact comprehensive reform that keeps rates low and equitable for all businesses regardless of size, structure or sector.

ABC SUPPORTS

- Comprehensive reform that lowers tax rates and simplifies the internal revenue code while maintaining parity for Main Street businesses and large corporations.
- Fair effective rates across industry, size and structure.
- Repeal of the estate tax (“death tax”).
- Repeal of the individual and corporate alternative minimum tax (AMT).
- Increasing and indexing the completed contract method (CCM) threshold.
- Repeal of look-back accounting requirements.
- Reform of depreciation schedules to reflect the useful life of capital investments.
- Making permanent worthy business tax credits and deductions (“extenders”).
- Repeal of Affordable Care Act taxes on wages and investment income.

ABC OPPOSES

- Corporate-only tax reform.
- Any proposal that widens the statutory rate gap between pass-through entities and large corporations.

BACKGROUND

More than a quarter century after its last significant reform, the nation’s tax system is creaking under its own weight. The sweeping changes of 1986 have been eroded over time by

Instead of widening the existing gap between Main Street and the Fortune 500, Congress must enact comprehensive reform that keeps rates low and equitable for all businesses regardless of size, structure or sector.

tens of thousands of pages of new regulations, loopholes and preferences. In its current form, the internal revenue code disproportionately affects small businesses, which are forced to expend significant time and resources in order to comply with increasingly burdensome tax provisions. Moreover, Congress impedes economic growth with unpredictable, ad hoc tax policies extended on a year-to-year basis.

In January 2013, in order to avert much of the “fiscal cliff,” Congress passed legislation to permanently extend Bush-era tax levels for most taxpayers, while creating a new threshold for higher earners who pay an elevated top rate. Although this statutory permanence lends some needed certainty to the business community, it adds further layers of complexity while opening up a significant gap between Main Street and Fortune 500 companies. With the overwhelming majority of construction businesses paying income tax at the individual level, many now face a top marginal rate up to 25 percent higher than that of America’s largest corporations. This new baseline must be used as an opportunity to pursue fundamental, comprehensive reform in a way that keeps rates low and similar for corporations and individuals alike.

As the economy continues to recover, the country can ill afford perpetually higher taxes on small business, the primary engine of job creation. Comprehensive tax reform will establish an encouraging climate for capital investment and economic growth. ABC supports minimizing the overall tax burden while reducing complexity and providing needed certainty to the construction industry and the broader business community.

OVERVIEW

The construction industry provides good, well-paying jobs to American workers every year. To qualify for many of these jobs, however, workers need high-quality, flexible skilled training. Such training can lead to a lifetime career opportunity in a lucrative field.

However, faced with economic stress, an aging workforce and an insufficient pipeline of new workers, the construction industry is anticipating a critical shortage of skilled craft employees. According to the Bureau of Labor Statistics, the construction sector is projected to grow twice as fast as the average for all industries, estimated at 1.6 million jobs between now and 2022.

ABC SUPPORTS

- Increased skilled training opportunities, without discrimination based on labor affiliation.
- Continued modernization of the federal apprenticeship law known as the Fitzgerald Act of 1937, which was enacted at a time when labor unions dominated the construction market. As a result, federal and state laws and regulations tend to favor the union style of apprenticeship programs and do not accurately reflect merit shop apprenticeship programs.
- Career and technical education (CTE) programs that provide motivated students interested in learning a trade with a course of study that combines industry-driven hands-on craft training in a real world environment with core academics and classroom learning.
- Craft training that results in an industry-recognized and nationally portable credential, which will achieve a safe, skilled and reliable construction workforce for the 21st century.

ABC OPPOSES

- Inconsistent actions that conflict with the goal of expanding job training opportunities by denying workers the fundamental right to choose to train and work in the merit shop sector of the construction industry.

BACKGROUND

ABC's formal apprenticeship programs are registered with the appropriate federal and state government agencies and meet all federal and state requirements, including employer-sponsored classroom instruction and on-the-job training.

ABC works closely with NCCER, a not-for-profit 501(c)(3) education foundation created in 1996 as The National Center for Construction Education and Research. Led by ABC National and ABC members, NCCER was developed by more than 125 construction CEOs and various association and academic leaders who united to revolutionize training for the construction industry. Sharing the common goal of developing a safe and productive workforce, these companies created a standardized training and credentialing program for the industry. This on-going, multi-million dollar investment in training illustrates NCCER's commitment to the future of the industry. Since its inception, the program has evolved into curricula for more than 60 craft areas. NCCER, headquartered in Alachua, Fla., is affiliated with the University of Florida's M.E. Rinker, Sr. School of Building Construction.

Increased skilled training is vital to the future of the construction industry. ABC will continue to work to ensure construction companies' training needs are addressed.

According to the Bureau of Labor Statistics, the construction sector is projected to grow twice as fast as the average for all industries, estimated at 1.6 million jobs between now and 2022.
