



ON: HEARING ON THE MINER SAFETY AND HEALTH ACT OF 2010
(H.R. 5663)

TO: THE HOUSE COMMITTEE ON EDUCATION AND LABOR

BY: JONATHAN L. SNARE

DATE: JULY 13, 2010

THE CWS's APPROACH TO WORKPLACE SAFETY

The Coalition for Workplace Safety (CWS) is comprised of a wide range of employers and employers' associations representing every type of industry from coast to coast. The goal of the CWS is to work with its members to improve workplace safety and health through the following principles:

- Cooperation. The CWS believes that workplace safety can be improved through a cooperative approach when all parties involved in this process (employers, employees, and OSHA) work together to achieve better results. Cooperation includes training and education so that employers, employees and OSHA all have a clear understand of what is required to comply with all applicable workplace safety and health obligations.
- Assistance. The CWS believes that most employers want to protect their employees and to maintain safe and healthy workplaces, and that OSHA should serve as a resource to assist employers to understand their obligations.
- Transparency. The CWS believes that OSHA safety and health regulations must be developed with the full transparency of the data, science and studies relied upon by OSHA. The CWS further believes that an open process with a sufficient opportunity for the public including employers, employees and stakeholders to participate in the rulemaking process and to provide helpful information to OSHA will achieve the best result in the development of a rulemaking that is clearly understandable and takes into account the impact of such rulemaking on employers and employees.
- Clarity. The CWS believes that standards and regulations must be written in simple and clear language so that all employers, especially small employers, will be able to understand their requirements without the expense of consultants and attorneys. The CWS further believes that greater clarity will result in greater compliance and lead to improved workplace safety and health.
- Accountability. The CWS believes that all parties (employers and employees) must be held accountable for their roles and responsibilities. Employers must provide the necessary training, equipment, resources and company emphasis to ensure that workplace safety and health is a priority and employees must accept that workplace safety depends on their actions and decisions.

More information is at www.workingforsafety.com

**STATEMENT OF JONATHAN L. SNARE
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR**

HEARING ON THE MINER SAFETY AND HEALTH ACT OF 2010 (H.R. 5663)

July 13, 2010

Good afternoon Chairman Miller, Ranking Member Kline and Members of the Committee. My name is Jonathan Snare. I am an attorney and I am currently a partner with the DC office of Morgan Lewis & Bockius LLP law firm. I appreciate the opportunity to appear before you at this hearing to address a number of the important issues raised by the Miner Safety and Health Act (H.R. 5663), and specifically to focus on Title VII "Amendments to the Occupational Safety and Health Act." I am testifying today on behalf of the Coalition of Workplace Safety (CWS) which is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity and accountability. Members of the CWS include associations comprising a wide range of employers from small businesses to large corporations, such as U.S. Chamber of Commerce, National Association of Manufacturers, Associated Builders and Contractors, National Association of Home Builders, NFIB, American Foundry Society to name a few. By way of further background, I am also a member of the Labor Relations Committee of the U.S. Chamber of Commerce and serve on its OSHA Subcommittee. My testimony and comments are not intended to represent the views of Morgan Lewis & Bockius LLP or any of our clients.

BACKGROUND

As you may recall, I testified before the Subcommittee on Workforce Protection on March 16, 2010 on behalf of the U.S. Chamber of Commerce on many of these same issues. I would like to incorporate my statement from the hearing into the record here, and I will not repeat in detail my prior testimony. Instead, I will offer comment on several of the OSHA provisions in H.R. 5663 of concern to the CWS and its members.

As I mentioned, I am a partner with Morgan Lewis & Bockius LLP, in the Labor & Employment Practice Group. My practice is focused on advising clients in the labor and employment field, largely in areas of workplace safety and health, as well as whistleblower matters, regulatory issues, wage and hour/FLSA, and other related matters.

Before joining Morgan Lewis in February 2009, I served for over five years in several positions at the U.S. Department of Labor. Among those positions, I served as the Deputy Assistant Secretary for the Occupational Safety and Health Administration (OSHA) from December 2004 through July 2006, as well as serving as the Acting Assistant Secretary for OSHA for most of that period, from January 2005 through April 2006. I then served as the Deputy Solicitor of Labor from July 2006 through January 2009 and I served as the Acting Solicitor of Labor for most of 2007.

Having had the privilege of running two of the Department of Labor's largest agencies, OSHA and the Solicitor's Office, I once had the responsibility of overseeing OSHA's critically important mission of assuring a safe and healthy workplace for every working American, and of the Solicitor's Office crucial role of providing legal support to OSHA to assist the agency in implementing the goals of its mission. In so doing, I believe I developed an understanding and insight on the many different strategies and tools that OSHA already has available to implement these important goals.

The concern that the CWS has with this proposed legislation is that its dramatic changes to the OSH Act are focused exclusively on punishing employers which, at the end of the day, will not result in an actual "real world" impact that improves workplace safety and health. The CWS further believes that this approach has unintended consequences that may undermine the intent of the bill. Penalties alone will not improve workplace safety—remember, in most cases, penalties are imposed after the fact of an injury or fatality. The critical mission of OSHA is to assist employers to make sure these injuries and fatalities never occur in the first place. As such, our current focus should be on efforts to prevent workplace injuries and fatalities before they occur, not on creating new methods of the punishment after the fact.

The CWS is convinced that Title VII of H.R. 5663 will create greater cost, litigation and hamper job creation. Especially during these challenging economic conditions, the adverse impact on the ability of employers to create jobs is a critical factor and should be of concern to this Committee and Congress. These proposed changes will impose substantial costs on businesses, particularly small businesses, which are struggling to create and retain jobs in this difficult time.

OSHA'S WIDE-RANGING MISSION AND STRUCTURE AND WHY THIS PROPOSED LEGISLATION WILL NOT IMPROVE WORKPLACE SAFETY AND HEALTH

The OSH Act tasked OSHA with the difficult mission "to assure so far as possible... safe and healthful working conditions" but it has always been the responsibility of the employers, not OSHA itself, to ensure safety and health on the jobsite. OSHA has never had the resources, even when the agency had its largest number of employees, to inspect the 7 million worksites now within its jurisdiction. When you take into account that federal OSHA conducts approximately 38,000 inspections it would take the agency over 90 to 100 years to inspect every worksite (and this timeframe is only slightly changed with the announced goal of 42,500 inspections in the OSHA FY 2011 budget). Clearly, enforcement alone will never be able to reach every workplace or serve as an effective deterrent. OSHA does not have the funds, and will never have the funds, to hire the staff large enough to reach each worksite on a regular basis through enforcement.

The only way to leverage OSHA's resources to reach the greatest number of worksites and have the most positive impact on workplace safety and health is to assist employers in their efforts to make workplaces safer. This approach can be achieved by using existing programs that offer compliance assistance, outreach, and training. Congress recognized this when it enacted the OSH Act. The Act's first section, "the Congressional statement of findings and declaration of purpose and policy," has several paragraphs dedicated to the importance of OSHA's role in

compliance assistance, outreach and training. This point also was made by the Clinton Administration's OSHA Assistant Secretary Joe Dear when he launched an aggressive compliance assistance program.

Since the inception of the OSH Act, America's workplaces are becoming increasingly safer. Over the last several years the agency has taken an approach to utilize existing programs to assist employers. Partially in part to these efforts data from the Bureau of Labor Statistics from 1994 to 2008 shows the total recordable case rates for workplaces injuries and illnesses have been cut in half (improved by 53.6 percent), and workplace fatalities are now at their lowest level ever. Congress should look to ways to continue these improvements rather than enact changes that would hinder these efforts.

Simply put, while enforcement plays a role, the best approach to further improving workplace safety and health under this existing system and structure is a proactive approach that reaches employers before there is a problem and provides them with the support and guidance they need to protect their employees. As part of this approach, workplace safety and health standards and regulations need to be clear and understandable so employers will be able to understand their obligations and to implement the necessary steps to be in compliance. OSHA would be better served if it would focus more of its existing resources or additional resources it receives from Congress on providing the type of training, education and compliance assistance materials to ensure that employers clearly understand what they are required to do while also maintaining appropriate enforcement.

Additionally, OSHA should also make sure its inspectors (Compliance Safety and Health Officers, or CSHOs) are properly trained to apply the OSHA standards and regulations to the actual worksite. Remember, that unlike MSHA which only has jurisdiction over one industry, OSHA has a wide ranging jurisdiction over 7 million workplaces in a vast array of settings in general industry, maritime and construction, and OSHA area offices often have the close to impossible task of enforcing against many different types of jobsites in their area with many different applicable standards and requirements. Often times, misunderstandings between OSHA and an employer occur because one side or the other has a different understanding of what exactly is required to be in compliance with OSHA requirements. That is usually why employers will contest OSHA citations and this legislation fails to take this factor into account. Instead, this bill focuses solely imposing more punitive requirements on employers and making it harder for employers to exercise their due process rights. It is important to mention in this discussion that most OSHA citations are either accepted by the employer or settled.

My experience in government service, as well as in private law practice, is that most employers want to do the right thing in terms of workplace safety and health, as most employers care about their most valuable resource, their employees. For the vast majority of employers, workplace safety and health makes sense for business and economic reasons, as those with safe worksites are often the most productive and efficient, with the lowest overhead and workers' compensation rates, and it makes sense because it is the right thing to do.

OSHA ALREADY HAS SUFFICIENT AVAILABLE ENFORCEMENT TOOLS AND PENALTIES TO IMPOSE SANCTIONS AGAINST EMPLOYERS WHERE THE CIRCUMSTANCES WARRANT

The CWS is of the opinion that there are already sufficient penalties and enforcement tools to take action against those employers. Under the OSH Act, there are currently five general categories of civil penalties available to OSHA to impose on employers: Willful; Repeat; Failure to Abate; Serious; and Other than Serious. Under the current structure, penalties for willful violations can be imposed up to \$70,000 for each willful violation of an OSHA standard or the General Duty Clause. While not defined in the statute, a willful violation has come to mean one where the employer is established to have been aware of and intentionally violated these requirements or acted with reckless disregard or plain indifference to workplace safety. OSHA also may impose a civil penalty of up to \$70,000 for each repeat violation, which is a violation of the same or substantially similar requirement by the same employer at the same or different facility. For serious violations, OSHA may impose a civil penalty up to \$7000. Additionally, OSHA has the ability to impose instance by instance penalties (the egregious policy) under certain circumstances so that the agency could impose willful violations for each instance of conduct, for example it could impose a willful penalty for each employee affected. In other words, the agency already has the prosecutorial authority to impose penalties in large amounts (sometimes in the multiple of millions of dollars) in these cases, as we have seen.

The agency also may impose a civil penalty of \$7000 per day for a failure to abate a violation for each day beyond the required abatement date that the particular condition or hazard remains unabated. Further, OSHA currently has the authority to shut down an employer's operation if OSHA believes that there is a serious hazard, which poses an imminent danger to employees.

As to potential and available criminal sanctions, the OSH Act provides that an employer may be subject to a criminal fine of up to \$250,000 and six months in jail for the first willful violation resulting in the death of an employee, and a criminal fine of up to \$500,000 and twelve months in jail for the second willful violation resulting in an employee fatality. And as I already noted in my testimony, OSHA did not hesitate during the previous administration to refer cases that met this criteria to the Department of Justice for review and consideration for criminal prosecution.

I also want to make clear on behalf of the CWS that it understands that its members need to fully comply with their workplace safety and health obligations. As I previously noted, the CWS believes that all parties have a respective responsibility and that employers should be held accountable including providing the necessary training, equipment, resources, and management emphasis on workplace safety. The CWS does not condone those employers who have intentionally flouted their obligations to protect their employees and fail to comply with their workplace safety and health obligations. Those employers—a small minority of employers—deserve the full range of enforcement sanctions by OSHA depending on the particular facts of the violation in question.

CWS's SPECIFIC CONCERNS WITH THE PROVISIONS IN TITLE VII OF THE MINER SAFETY AND HEALTH ACT OF 2010 (H.R. 5663)

As I previously mentioned, these proposed changes will simply not achieve the desired results in terms of improving workplace safety and health. Further, many provisions of this legislation and these revisions will result in adverse consequences to OSHA in terms of the administration of its enforcement, and to the Solicitor's Office, which is charged with the responsibility of litigating contested cases.

At its core, let me repeat a point I noted at the March 16 hearing—these proposed changes in H.R. 5663 can be best described under the old adage “bad facts make bad law.” This effort to change the OSH Act with enforcement-only sanctions appears to be driven by the conduct of the few outlier employers who fail in their workplace safety and health obligations. These proposed penalty increases and other sanctions will do nothing to assist employers to understand their obligations for workplace safety and health, such as the small business owner who is trying to understand how to comply with applicable requirements. For example, how will increasing penalties help her design a more effective workplace safety program when she knows she is unlikely to see an inspection unless there is an accident or fatality? Increased penalties and new criminal liabilities will promote an adversarial relationship between employers and OSHA. As a result, employers will be more hesitant in proactively engaging OSHA. This employer is obviously better served with more outreach and compliance assistance materials than increased penalties. Again, the goal here is compliance and prevention, not sanction. This approach benefits employers but more importantly it benefits employees.

Specifically, the CWS has the following concerns with these provisions of Title VII of H.R. 5663:

Abatement of hazards pending contests of citations (Section 703): This section creates a new burdensome requirement on employers to abate any hazard that is the subject of a serious, willful or repeat violation (exempting only other-than-serious violations). The clear result of this new requirement will be to reduce or eliminate the ability of an employer to challenge a citation through the Occupational Safety and Health Review Commission (OSHRC) administrative process by requiring this immediate abatement to all of these citations. Importantly, immediate abatement is already available through the emergency shutdown mechanism when OSHA identifies an imminent hazard to employees (Section 13 of the OSH Act) in certain situations.

This proposed mandatory abatement provision would substitute an employer's ability to suspend abatement while contesting the citation with a higher burden of proof akin to what is required for securing a temporary injunction: (i) the employer has to demonstrate a substantial likelihood of success of its underlying contest of the citation; (ii) the employer will suffer irreparable harm absent a stay of this requirement; and (iii) the stay of this requirement will adversely affect the health and safety of workers. Even more troubling, this proposal gives OSHA the authority to impose a civil penalty on employers of \$7000 per day if they have not corrected the hazard after the citation or obtained such a stay through the OSHRC. This punitive new set of penalties is simply unjustified and an outrageous trampling of due process rights. Abatement is more than just protecting against a hazard; it is part of accepting responsibility for

the violation. Mandating abatement before allowing the employer to exhaust their adjudicative process would be like asking a criminal or civil defendant to pay a fine or serve a sentence before the trial is held.

I should also point out the potential adverse impact on the workload of the OSHRC with this proposal, in that employers may be faced with no choice but to file legal action to stay this requirement, which is required to have a hearing in 15 days in this legislation, followed by a decision in 15 days. There is also a process by which a party objected to the initial decision to appeal to the Commission itself. The implications to the Commission workload are staggering to imagine.

There is another provision in this proposed legislation which will add another burden to employers who chose to exercise their due process rights of contesting OSHA citations. Section 707 imposes what is termed “pre-final order interest” (essentially prejudgment interest), compounded daily, which begins to accrue on the date an employer contests any OSHA citation. This additional penalty on employers for OSHA citations which have not yet been adjudicated by the OSHA Review Commission appears to be unduly punitive, and will not result in any improvement of workplace safety and health; the supposed goal of H.R. 5663. The only result of this provision will be to increase the difficulties for employers who choose to exercise their due process rights and to contest any citations they believe were incorrectly or wrongly imposed to the particular situation.

In addition, this provision will eliminate OSHA and the Solicitor’s Office prosecutorial discretion in handling these contested cases and eliminate one source of potential leverage that OSHA and the Solicitor’s Office can use to resolve cases with the requirement to impose immediate abatement.

The combined effect of mandatory abatement and the greater difficulty in getting a stay will be that the OSHA inspector who issues the citation will have the roles of judge and jury. This is grossly unjust as many OSHA inspectors are unfamiliar with the industries and workplaces they are inspecting. They very well may not know the best workplace procedures and which are actually the safest. Enhancing their authority as this section is a prescription for overzealous and improper citations.

In sum, this provision is unduly punitive and makes it much more difficult for employers, particularly smaller employers who lack resources, to challenge certain citations, which they may believe in good faith are incorrect or improperly imposed by the agency in the first place. The end result of this requirement will not be an improvement in workplace safety and health. Instead, the only result of this onerous set of requirements will be to impose more costs and more burdens on employers at precisely the wrong time in this challenging economic environment when employers everywhere are struggling to stay afloat.

Civil Penalties (Section 705): The increases in civil penalties in Section 705 raise the issues already mentioned about a punishment-focused approach, which will in and of itself, not result in any improvement of workplace safety and health. From the employers’ perspective, how can we not say that this bill is about punishment? If you have any doubt that this new

legislation is about punishment of employers, let me cite the new provision in Section 705 that will give OSHA the authority to consider an employer's history of OSHA citations from state plan states as part of the process to determine whether a federal OSHA violation is a repeat violation or not. This is another example of a dramatic change to 40 years of OSHA practice for the sole purpose of punishing employers. When combined with the recent steps taken by OSHA to increase civil penalties and more aggressive enforcement, such as through the new SVEP program as well as the new higher penalty calculations in the OSHA Field Operations Manual, employers may have no choice but to consider contesting every citation to avoid these further punitive sanctions.

Even now, employers have difficulty understanding what OSHA requires in its standards, as well as understanding its potential liability; these new proposed penalties and other new requirements (such as the immediate abatement requirement and new criminal sanctions) will only add to the difficulty for employers to not only understand what is required of them but to face a dramatic increase in costs, precisely at a time in our economic life, when employers can ill afford such sanctions.

Criminal Penalties Section 706): These proposed changes to increase the criminal sanctions will do nothing positive for workplace safety and health. Again, these expansions of criminal sanctions—both by reducing the necessary intent level to “knowing” and creating personal culpability—will yield much greater levels of challenges instead of improvements in workplace safety.

First, the CWS is concerned by the proposal to change the level of intent (mental state) necessary for criminal penalties from the current “willful” to “knowing.” Such a change would upend decades of OSHA law—dating to the passage of the OSH Act in 1970 and introduce tremendous uncertainty, further guaranteeing substantial increases in contested cases. While the “knowing” standard is used in environmental statutes, it has not been the standard for OSHA criminal culpability. In environmental law, the term “knowing” has come to be associated with a low level of intent, almost akin to a strict liability standard where the party in question has to know only that a given activity was taking place, not that there was a violation occurring or that environmental laws were being broken. As there is no further definition in the bill of this standard, employers (and OSHA inspectors) will be left to guess what this means and when it should apply. This is a prescription for utter confusion and legal challenges that will be costly to both the employer and the agency.

Further, imposing criminal liability on any “an officer or director” is equally troublesome. The CWS believes this proposal will result in a witch hunt to hold officers or directors responsible. Expanding criminal liability to any officer or director will make corporate personnel unduly subject to prosecution even if they generally have no involvement in day to day operations. All of these terms are vague and ambiguous as to who would fall within these categories. These terms are also vague as to how they would be applied in the legal process; do they apply only to the corporate entity or other legal entities such as partnerships? Does this mean that any limited partner or director would now be subject to potential criminal prosecution? How would responsibility be determined? None of these changes will improve workplace safety and health, and actually, this new requirement, if adopted, could result in adverse impacts as

corporate employees would now fear that any decision they could make on the jobsite could subject them to prosecution; a safety director or E, H & S employee could be faced with the reality that every one of their decisions would be micromanaged, potentially by employees who have little or no expertise in safety and health. This will create a chilling effect on these employees trying to simply do their job, or even taking these jobs. Furthermore, these are the people that should get those jobs—the ones that care enough and know what should be done, but do not want to be exposed to criminal liability because of the actions of an employee they could not control. This could create uncertainty on the jobsite with a net reduction of workplace safety and health.

New whistleblower requirements (Section 701): This section will add new requirements and create additional complicated and costly procedures for adjudicating whistleblower cases, without any evidence or justification that the existing protections available to employees under Section 11(c) of the OSH Act are somehow deficient. The CWS is also concerned with other proposals in Section 701 which are overly punitive on employers and will benefit no one, aside from trial lawyers.

For example, this section completely eliminates any flexibility for an employer and employees to negotiate employment contracts or agreements which include an arbitration clause applicable to whistleblower rights. Arbitration clauses are often used as a mechanism for resolving disputes which is quicker and less costly than litigation. This section also includes broad and vague language prohibiting settlement of any whistleblower claims that contain “conditions conflicting with the rights” protected in Section 701 including the restriction on the complainant’s right “to future employment with employers other than the specific employers named in a complaint.” This blanket prohibition on the ability of employers and whistleblower complainants to enter into settlements that make sense to them in the context of the particular case at hand will make it more difficult, at the end of the day, for the parties to settle these cases. The end result: more litigation and more costs on employers.

Furthermore, this section grants employees a right to bring an action against their employer in federal court for no reason greater than the Administrative Law Judge or the review board missing a 90 day deadline to issue their decisions—deadlines that were predicted to be routinely missed by whistleblower law expert Lloyd Chinn in his testimony to the Subcommittee on Workforce Protections on April 28.

We also note that the new whistleblower provisions being discussed today allow employees to recover, against the employer, their attorneys’ fees and costs if they are successful in getting an order for relief from either the Secretary or a court. Similarly, allowing small businesses that successfully defend themselves against an OSHA citation to recover their attorneys’ fees has long been one of our key goals. Bills to permit this have passed the House with bipartisan support in previous Congresses. While inclusion of this idea would not cure the problems we see with these whistleblower provisions, we believe allowing small businesses the same opportunity as employees to recover attorney’s fees is only fair.

THE ADVERSE IMPACT OF TITLE VII OF H.R. 5663 ON THE OSHA CONTESTED CASELOADS AND THE ADMINISTRATION OF OSHA LITIGATION

I would also like to reiterate an issue and concern I mentioned in my testimony on March 16, 2010—the potential impact of these proposed changes to the OSH Act on the OSHA adjudicatory process. The net result of these proposals to increase civil and criminal penalties; dramatically revise the whistleblower structure under the OSH Act; and require immediate abatement will cause not only employers to contest citations at higher rates, but will result in delays in the ultimate resolution of contested enforcement cases, and unduly strain the resources of OSHA and the Solicitor's Office.

We do not need to look any further than the recent example of MSHA enforcement of the mine industry after changes to increase the penalties and other sanctions to get a picture of the potential difficulties and challenges. Indeed, this Committee held a hearing on this subject on February 23, 2010 and heard testimony raising these same concerns. As I mentioned in my testimony at the March 16, 2010 hearing, the increased penalties under the Miner Act, combined with the aggressive use of existing tools, such as the Pattern of Violation mechanism, resulted in a dramatic increase in contest cases. For example, the percentage of contested MSHA violations went from just over 5 percent in 2005 (the year prior to the Miner Act), jumping to over 20 percent by 2007, and over 25 percent in 2008 and 2009.

From personal experience I can attest to the challenges these increases posed for the Solicitor's Office and MSHA. During this same period, I was the Acting Solicitor and Deputy Solicitor and we devoted significant time and effort to manage the impact of these higher contest rates. We had to shift resources within the Solicitor's Office, and take other often difficult steps, to assist with this dramatic increase in the workload. Due to the risk of the Pattern of Violations and the significantly higher penalties, it was much more difficult to settle cases, further adding to the problem. The MSHRC also faced problems in that they simply did not have enough ALJs to hear all of the cases. Funding increases partially solved this problem but it still remains a huge problem and the resolution of many cases has been delayed for months, if not years. The current backlog of cases is 16,000 and the caseload docket increased from 2,700 cases in FY 2006 to more than 14,000 cases in FY 2009.

I think it is important for this Committee to carefully consider the practical real world impact of any of these proposed changes to the penalty structure which will have a significant impact on the administration of the OSHA contested caseload. While the budget situation at DOL is different now from the time I served, these proposed changes will still have what I believe to be a significant impact on the OSHA adjudicatory process, and I believe this Committee should be aware of the impact of this legislation and should take these concerns into account when considering this legislation.

CONCLUSION

The OSHA proposals included in Title VII of the Miner Safety and Health Act (H.R. 5663) would result in significant and dramatic changes to the OSH Act, with the imposition of a more punitive civil and criminal penalty structure, and make it harder for employers to exercise due process rights to contest citations or defend against whistleblower complaints, without any beneficial impact on workplace safety and health. The CWS believes that this legislation is only about the punishment of employers, the vast majority of whom want to do the right thing in

terms of workplace safety and health, and this bill will not prevent workplace safety and health injuries and fatalities. There is nothing in this proposed legislation that will provide any assistance to employers, and most importantly small businesses, to improve safety in their workplaces. Rather, this proposed legislation will result in higher costs and added liabilities on employers, including small businesses, who are struggling in this challenging economic time to maintain operations, expand, and trying to retain jobs. These increased costs will have only a detrimental impact on these efforts.

The goal here, as I previously noted, is to prevent workplace fatalities and injuries from occurring, not merely punishing the employer after they occur. As recent data makes clear, with the lowest ever recorded level of workplace injuries and fatalities, the best way to achieve continuous improvements in workplace safety and health is to utilize a proactive approach with enforcement when appropriate, and offer outreach, training, and compliance assistance to that vast majority of employers who want to do the right thing and comply with their workplace safety and health obligations.

Mr. Chairman, thank you for this opportunity to speak to you on these important issues, and I would now be happy to respond to any questions that you and the Committee may have.