REGULATORY BARRIERS TO MINORITY ENTREPRENEURS

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATION AND PAPERWORK

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

WASHINGTON, DC, JUNE 7, 1995

Printed for the use of the Committee on Small Business

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REGULATORY BARRIERS TO MINORITY ENTREPRENEURS

WEDNESDAY, JUNE 7, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATION AND PAPERWORK,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:10 a.m., in room 2359–A, Rayburn House Office Building, Hon. James M. Talent, (chairman of the subcommittee) presiding.

Chairman TALENT. Good morning to everybody. I want to begin this morning by thanking each of our witnesses who have agreed to appear before the subcommittee today, especially those who have traveled great distances in order to be with us.

It is also a great pleasure to have Congressman Flake, a member of the committee, here to testify; and former HUD Secretary Jack Kemp, a former member of the committee, is also with us today.

In fact, Mr. Secretary, I understand we have surviving photographs of the committee at a time when you served on it, and you look just as young as you do today.

Mr. KEMP. Careful there, I just had my ninth grandchild.

Chairman TALENT. You must have gotten started early.

Mr. KEMP. It is going to be tough to look at those old pictures without a tear in my eye.

Chairman TALENT. This morning the Subcommittee on Regulation and Paperwork will hold the first in a series of hearings on the regulatory burdens of particular concern to minority entrepreneurs. I hope this hearing will provide members of the subcommittee with an overview of the Federal, State, and local regulatory issues of particular concern to minority small businesses.

The toll Government regulations exact from the American economy every year is well-known. Excessive regulations kill jobs and cost the economy an estimated $500 billion every year-more than $5,000 for each average American family. These regulatory costs are borne by every business and every family in this country, but especially those on the bottom rungs of the economic ladder. There is a great deal of evidence that excessive regulation and arbitrary barriers to business creation on top of other impediments that already face many minority communities have a disproportionate impact on minority entrepreneurship.

Clearly, some Government policies have been designed to help minorities achieve access to opportunity. For example, it took the power of the Federal Government to end segregation in the United States and to end State-sanctioned discrimination. The importance

of these achievements simply cannot be underestimated. But an increasing number of minority entrepreneurs believe that excessive regulations prevent them from establishing businesses, hiring employees, and producing goods and services needed by our society.

The purpose of this hearing is to discover what Government regulations interfere with creative entrepreneurship. We will explore the concept of "economic liberty," the inherently American ideal that every American, from every neighborhood, and from every background has the right to pursue a trade, job, or profession of his or her choice free from arbitrary Government intrusion. In doing so, we will try to determine whether specific regulatory policies place the heaviest burdens on our Nation's minority entrepreneurs, many of whom struggle to join the economic mainstream by starting out at the bottom of the economic ladder.

By raising these questions, I hope that our witnesses today can help the subcommittee understand the extent of the problem and where the bulk of it lies: At the Federal, State, or local level, or some combination of all three. After we conclude, I hope we will leave this discussion with a sense of what can be done to ensure that every American's right to pursue his or her dream is not infringed upon by arbitrary Government policies.

Again, I would like to thank the witnesses who are with us today. I will introduce them in a moment. At this point I would like to recognize the ranking member of the subcommittee, Ms. VELÁZQUEZ., for an opening statement.

[Chairman Talent's statement may be found in the appendix.]

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Let me say at the onset that I have always been a very strong supporter of minority small businesses. I believe in granting the minority entrepreneurs of our era both the opportunities that they deserve and the help that they need. Because of this I have been and will continue to be an outspoken advocate of the 8A and other minority set-aside programs.

But, Mr. Chairman, I take exception to the approach that we seem to be taking today. Witnesses have been called before a Federal panel to discuss purely local issues. I do not believe that we have any jurisdiction over the local ordinances and regulations of Denver, Colorado, or Washington, DC. We cannot offer any relief unless, of course, the majority party intends to reverse its position on Federal mandates. If a citizen of one of those cities has a problem with a local law, he or she should bring them to the city council or a State legislature.

I understand that much of the testimony today focuses on the repeal of the Davis-Bacon Act. While I respect the views of the panelists, I take strong exception to any attempt to undo that statute and subvert the purposes that it serves. Repeal of Davis-Bacon, like the abandonment of the minimum wage, suggests competition based upon the lowest wages and the most minimal living standards.

It is a wage race to the bottom, with contracts going to the bidder with the most desperate labor force. The elimination of Davis-Bacon merely opens opportunity for workers to join the ranks of the working poor. It certainly won't help minority individuals and

families to ever own their own home or send their children to college.

Before concluding my opening remarks, I would like to welcome Jack Kemp, a distinguished former colleague and fellow New Yorker. I look forward to his testimony and those of our other witnesses on this very important issue.

Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentlelady. I am going to follow the committee's rules regarding opening statements and limit them to the chairman and the ranking minority member. But if anybody else has a statement they would like put in the record, that will happen without objection.

I will go ahead with the witnesses now, and when Mr. Flake arrives we will go ahead and put him on after whoever is testifying at that point.

Our witnesses on Panel one are the Honorable Floyd Flake, Congressman from the Sixth District of New York. I will go ahead and just mention who is on the panel and then introduce Secretary Kemp. The Honorable Jack Kemp, who is the co-director of Empower America here in Washington, DC, and has a long pedigree of which everybody here is, I'm sure, familiar. Mr. Clint Bolick, vice-president and director of Litigation for the Institute for Justice here in Washington, DC, and Peter Kirsanow, the labor counsel for Leaseway Transportation in Cleveland, Ohio.

Secretary Kemp, in Mr. Flake's absence, why don't you go ahead and begin your testimony.

TESTIMONY OF HON. JACK KEMP, CO-DIRECTOR, EMPOWER AMERICA, WASHINGTON, DC

Mr. KEMP. Well, Mr. Chairman, first of all thank you, and Ms. Velázquez. I listened to your opening comments with a great deal of interest, and I appreciated the welcome that both of you and all of the committee are giving to the issue, notwithstanding some of the objections that you might have. I would like to take, Mr. Chairman, the issue to a higher level and a broader level, which is I think what the gentlelady from New York was attempting to address in her opening comments.

First of all, I approach this issue with a great deal, believe it or not, of humility. That may be oxymoronic for some to hear Jack Kemp talking about humility. There are many different angles to this issue. I think it is extremely important that we listen to not only the witnesses from Floyd Flake and Clint Bolick, but to Mr. Jones, whose story I read in the Denver newspapers when I was going through Denver. I found out that he is a young entrepreneur attempting to start a taxicab company in Denver that had been denied application by the Denver City Council, which since has been rescinded.

I told him upon meeting him that my daddy was a truck driver in Los Angeles. There was no ICC; there was no Commerce Department; there was no set-aside. Banks in those days used to make loans. He had access to about everything he wanted, except capital.

I am going to approach this issue from the standpoint that the number one impediment in our country to the establishment of a small business, particularly for minority men and women-albeit

regulations are impediments-the number one impediment is the heavy burden of taxation on the formation of the capital and the "seed corn" necessary to start that business and launch that version of the American dream.

I am delighted to be with my co-participants. I only wish Floyd were here to start this off, because I am a fan of Floyd Flake's and appreciate the perspective that he will give.

My humility is wrapped up in a statement by a Chinese philosopher who said one time, "There is a great deal of wisdom in the world, but unfortunately it was all divided up among people."

Everybody on this Earth has a little slice of that pie of wisdom, and I am only here today to share with you my tiny, little slice of the pie of 18 years in the Congress, 4 years as HUD Secretary, and someone who has spent most of his public life traveling in inner-city environments-albeit not being a minority myself, profoundly concerned that the American dream was being extinguished in front of our eyes.

If Dr. King were here today-I cannot speak for him and do not attempt to-but if he were here today, he would be talking about the next chapter of civil rights, as Chairman Talent mentioned, being economic opportunity, access to ownership, housing, jobs, job training, education, and a chance to not be a truck driver but to own the truck, not just to be driving a taxi, but to start the Freedom Taxicab Co.

That is the dream of my parents, and I am sure all of our parents. I spoke a number of years ago, and gave the same remarks that I would give today. In fact, I have been talking about it so long I do not know who is more tired of my testimony, myself or the people who have to listen to it. Because, frankly, we have not done enterprise zones.

I did not get the enterprise zone concept from Margaret Thatcher; albeit, the press always says "Kemp got enterprise zone concept from Margaret Thatcher." She was only one of many. I got it from the former Governor of Puerto Rico, Luis Munoz Marin, who was the author of the industrialization policy which was predicated upon reducing regulations and reducing the tax burden on the Island of Puerto Rico in the 1930's and 1940's, just to put that at rest.

It is bipartisan. This cannot be Republican versus Democrat; black versus white or brown; male, female; and it certainly cannot be rich, poor. The rich are already rich. By definition if you are "rich" in America, you do not need the same access to the capital necessary to start what Leroy Jones or other men and women who testify are going to talk about.

Bobby Kennedy said these words, "To fight poverty without the power of free enterprise is to wage war with a platoon while your great army is left on the sidelines." I think, Chairman Talent, Mr. Chairman, if I might say so, that is what you were talking about.

It is propitious that we are talking about this today, because small businessmen and women create about 91 percent of all the new jobs in America. David Birch of MIT, Professor Birch said, "91 percent of all new jobs in the last 20 years have been created by small businesses with less than 125 or maybe 150 employees."

Big business does not create jobs; they are net losers of jobs. They have been downsizing for two decades. In fact, in the 1980's, just as a parenthetical point here, when we lowered the tax rate on income and lowered the capital gains rate-people forget, you were all too young to remember this-but the capital gains rate used to be 49 percent. Kennedy lowered it by 30 percent. The Steiger Amendment lowered it from 35 to 28, then the Kemp-Roth Bill lowered it again from 35 down to 20, and it went back up in 1986.

Putting that aside for a moment, it has become a major burden on access to capital formation. As capital gets locked up in the hands of wealthy people, they can go out and leverage their assets to borrow, which is tax deductible. But if you sell the asset, you get taxed on an unindexed capital gains rate of close to, get ready now, 60 to 70 percent, if you have held an asset for longer than 4 or 5 years. If you happen to live in New York or California, you could very well today be in the 50 percent capital gains tax rate.

I do not bring that up as the only issue, but I bring it up as a fundamental barrier to minority enterprises. As Earl Graves said in "Black Enterprise Magazine," they did a study of minority entrepreneurship and Earl Graves, the publisher of "Black Enterprise Magazine," and I know he speaks for women and men and minorities and all people when he said that, "The number one problem in starting a small business in America today is access to capital."

Hey, Congressman Flake, I was just talking about you, man. Nice to see you. We were up together in your wonderful district a few years ago when I was HUD Secretary. I am kind of saying some of the same things I said in the hearing, that access to capital for minority men and women is the secret to launching a new chapter of civil, human, and legal rights and the American dream. Excuse me for repeating myself.

Mr. FLAKE. Well, you always repeat my sermons anyway.

Mr. KEMP. Well, this is a sermon.

Mr. FLAKE. You are doing great.

Mr. KEMP. I was making the point that the number one impediment to starting a minority business is lack of access to capital and credit. Earl Graves went on to say, "If African-Americans," now he is writing obviously about his own people, but he could be talking about your people and all people, all men and women who have been left behind in this great experiment in human freedom and human democracy. It cannot work until everybody has equality of opportunity, and that was the chair's opening predicate.

Earl Graves said, "If African-Americans are ever to secure a full measure of freedom and independence in America, they must not only be the employee, they must be the employer. They must not only collect the paycheck, they must issue the paycheck. They must not only have the dollars to stay in a hotel, they must have access to the capital to own the hotel." Now, all he is talking about is that which we celebrate in this age of the collapse of Communism and Fascism and Apartheidism. Every country in the world is looking to us.

Nelson Mandella the other day announced he is going to privatize housing and cut tariffs and tax rates to encourage investment for job opportunities for the "colored population." I guess that

means the Indian or the South Asian population and African-American, Black African population.

Deng Xiaoping, a card carrying Maoist, said in the "China Daily Mail" 10 years ago, "It is now glorious to get rich" in China. If you live in the provinces from Shanghai down to Guandong Province, along the coast of Hong Kong, it is unbelievable. Now, listen to this. No tax on income for 4 years, zero tax on capital formation, zero tax on capital gains. Deng Xiaoping. Problems abound, human rights abuses abound.

They know, and I think I know, that if they liberalize the economy ultimately there will be a greater liberalization of human, civil, legal voting rights. I believe that, I believe that. I do not think there is a substitute for that battle for civil human rights, but I think it is essential.

I bring passion to this subject, because I do not see how we can solve the problem of poverty. I do not see how we can solve the problem of unemployment in this Nation's Capitol and other inner urban areas of America without a radical attempt to open up opportunities for people through regulatory reform.

I do not necessarily agree with everything. I must admit when I was at HUD we used set-asides for advertising FHA housing that had been abandoned or had come into the portfolio of the Federal Housing Administration. We advertised in minority newspapers. We believed that that was an important part of opening up access to advertising opportunities not only for the publisher of a minority Hispanic, Latino, or African-American newspaper, but we thought giving people in the minority community access to the information about those FHA homes.

Ultimately, I want to say that I do not think set-asides, I do not think the SBA, frankly, makes about ½ of 1 percent of the total loans to small business in America. Now, let me just make a radical proposal, and then I will stop and turn it over to Floyd.

I think we ought to seriously consider repealing-well, that is about as diplomatic as I can say it-I think immediately we should repeal the top surtax that was placed upon the economy in the 1993 tax budget or tax bill. To be bipartisan about it, I think we should repeal the Bush tax rate increase too. Do not forget the Bush administration raised taxes.

May I say to the gentlelady from New York because of her eloquency in opening up these hearings from the minority standpoint and talked about 8A set-asides, what good is a set-aside if as you get the set-aside and you get the chance to own or participate in a Government contract if the Government confiscates the income with which you need to launch the next expansion of that business?

Everybody says to me, "Well, Kemp, that is trickle-down economics." That is not trickle-down economics. It might be a Niagara Falls, but it would not be a trickle. Trickle-down economics, in my view, is giving tax credits to existing businesses to hire people on the theory that you are only going to give it to businesses that have already started it.

The secret of a highly dynamic economy is to give the startup business a better shot. They are the ones that create the jobs. I want to make one last point, and then turn it over to Floyd.

In the 1980's, much abused from both the far left and some of my budget-balancing friends on the far right, the 1980's launched the greatest decade of minority entrepreneurship in the United States of America. I am not giving the credit to Ronald Reagan or Kemp or Roth or anything else as much as I am giving the credit to the people who are waiting to get a chance to do something.

There was a 45 percent increase in minority-owned businesses. Black-owned businesses doubled. Hispanic-owned businesses grew by about 50 percent. More women went into business in the 1980's than any decade in the history of American, bar none. Women-owned businesses in the 1980's hired more people than the Fortune 500 have hired in the past 20 years.

The secret to a dynamic economy is small business. The Republican Party has spent too much of our time in the past on what is good for General Motors is good for America. That is wrong. What is good for America and for all people will be good for mom and pop; and if it is good for GM, that is fine.

Now, our friends on the left, may I say to this panel, to be bipartisan about this, they worry about somebody getting rich. Countries who worry about people getting rich are countries who do not hurt the rich, they end up hurting the poor. The rich get rich under any kind of a system. It is the poor, as the Chairman pointed out, who are left behind.

Leroy Jones, who will testify more eloquently than Kemp or anyone on this panel, maybe other than Floyd, was denied his civil human rights to start a business. My daddy was a truck driver, bought the truck. He got a bank loan when banks, as I said, used to make loans.

Remember those days, Floyd?

Mr. FLAKE. Yes.

Mr. KEMP. Your daddy used to tell you about them.

Mr. FLAKE. Oh, yes.

Mr. KEMP. Today, the source of capital has dried up because we are overtaxing the formation of investment capital and we overtax human capital. As soon as that welfare mother or unemployed father tries to get off of welfare and out of poverty and off of unemployment, the Government confiscates about 15 percent of the first dollar of income that they make. It takes away their health benefits, it takes away food stamps, and it takes away welfare. The combination of the loss of welfare, coupled with the tax on his or her income is a barrier to getting off of poverty.

I think everybody is overtaxed. I think everybody is overregulated. I am not calling for laissez faire, 18th century, dog-eat-dog, Darwinian, biological competition where only the fittest can survive. We need a safety net under which people should not be allowed to fall, but we need a ladder of opportunity.

I want to make a case today, Mr. Chairman, that the ladder is pretty high in this country. You can go pretty darned far. Bill Gates of Microsoft, Sam Walton. John Johnson of Ebony, he started on welfare. He started The Negro Digest in 1945, and now he owns Ebony and Jet.

The ladder does not go deep enough, and it will not go deep enough into the inner-cities of America until we reduce this regu-

latory and tax burden on the entrepreneur who is the source, as I said, of about 90 percent of all the new jobs.

I make a passionate plea to change the subject of the whole panel. I have got my formal testimony, but I want to recall John and Bobby Kennedy, and Luis Munoz Marin and, yes, Jack Kemp and Ronald Reagan. I mean, this is not partisan.

Look, reducing the capital gain rate will do more to help the poor than to help the rich. I said earlier the rich are rich. They have already got their capital. Their capital gains are behind them. Leroy Jones' capital gains are ahead of him. If he makes it in Denver with an enterprise that hires people and becomes successful and the Government turns around and confiscates that which he has been able to build up, that would be a tragedy of unbelievable proportions.

That is what is happening in America. That is why we have got to have these hearings. It is propitious today, Mr. Chairman, because the unemployment rate went up, what, 2 weeks ago. The Index of Leading Economic Indicators has fallen for 3 straight months. The economy is slipping. No, we are not going in a recession, but the Federal Reserve Board is running around talking about a "soft landing." When they talk about a "soft landing," I can guarantee you minority men and women and the poor will have a very hard landing, Mr. Chairman.

To think that the Federal Reserve Board today is trying to slow down the economy to fight inflation, we ought to have hearings on that. How dare they slow this economy down when folks are unemployed? How dare they weaken the tax base of the cities?

Thanks for letting me preach to the choir.

Chairman TALENT. Thank you, Mr. Secretary.

Our next witness is our colleague, a Member of this committee, and of this Congress.

Mr. KEMP. That makes you upset, doesn't it, Floyd?

Mr. FLAKE. Always.

Chairman TALENT. The distinguished Member from New York, Mr. Flake.

[Mr. Kemp's statement may be found in the appendix.]

TESTIMONY OF HON. FLOYD FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE SIXTH DISTRICT OF THE STATE OF NEW YORK

Mr. FLAKE. Thank you very much, Mr. Chairman, and thank you for the invitation. I guess the only benefit of following former Congressman, Secretary Jack Kemp, is to know that he was a former quarterback, and so I am either the halfback who is receiving the ball or the end who is getting the pass.

I think he and I worked extremely well while he was here as Secretary, and I certainly think all of us know that the enterprise zone legislation he and Charlie Rangel worked diligently to make sure that it would happen. Though it happened after he had left Government service, the reality is that I think its long-term benefits bespeaks well for what his intentions have been. It is not just a matter of his words; it is a matter of his deeds and his works that we have always commended him and will continue to do so.

I think that one of the things I learned in both the Banking Committee and here while he was Housing Secretary is just the simple fact that we could work beyond partisanism. That has been my history. He has been out to the district where I serve, largely because my direction has been one of trying to build in communities where most folk do not believe there is an opportunity.

I call them "fertile fields of opportunities" that have been long ignored in America. Long ignored because there are certain perceptions of these communities that, one, they could not support jobs; two, they do not have the talent and resources to be able to generate new jobs.

The reality is I just finished my dissertation for my doctorate, and one of the things I did was an analysis of what happened before the turn of the century and immediately thereafter. Historically, in African-American communities and urban communities throughout America there was an ability to be able to build institutions, in spite of legislative barriers and other barriers that precluded and mitigated against that possibility.

The reality was, though, that in spite of the Government activity, there was at least a strong sense of community before the 1960's, before integration as we know it. Those persons living in those communities understood that if they were to provide jobs for their people, if they were to provide houses and basic benefits, they had to produce those things themselves.

Integration for many of us now who were major proponents of integration, I sometimes wonder if it has not been disintegration, to the degree that the dispersal of those communities and the persons in those communities who made the investments to help build those communities are no longer available. They are not there. Their resources have been taken out by virtue of the fact that they have no access, and those investments do not come back into the communities.

In 1962, when I left Houston, Texas, to go to Wilberforce University, in Ohio, the University of Houston had not a black student. Its first student was a former professional football player, Warren McVey. They accepted him because he was an athlete. He was an all-American athlete in high school and went on to be one in college and on to the pros.

During that time persons who were athletes, persons who were in business, persons who were doctors, lawyers, whatever they were, they were constrained to have to live in that community. Therefore, they invested in those communities. In many instances, because of their stature in the communities, banks were not as reluctant as they later became in investing in those communities. It was possible to pool their resources and to rebuild those communities.

Twenty years ago, I left a job as dean of students at Boston University to go to New York at the request of a bishop to pastor a church. My concern was, how do you take a community that was described in the press at that time as a "declining community of potentially middle-class people," but a community that would ultimately become just another ghetto if there was no attention given to the fact that this community represented an opportunity through investment?

One of the tragedies of that happened in the sixties, and I was on a model cities board in Dayton, Ohio, and my years in seminary one of the things I discovered was that the program probably was never designed to succeed. It did not deal with a basic question, and that was the question of: How do you build a community through investment as opposed to trying to build community just through social programs?

My argument has not been one that is juxtaposed to social programs but one that says that the formula was always wrong. The formula did not appreciate the fact that in almost any community if you are going to build there is a need to access capital. The accessing of capital meant that those institutions responsible for capital formation in any other community also had a responsibility and an obligation to make sure that capital was available to these communities.

No community in America, whether it is suburban America or whether it is rural America, where they have moved from the downtown segments to the outer portions of town where the Walmarts are, and so forth. In small towns that I have visited in the South, the reality is it could only happen because there was capital available to make it happen.

In the minority communities, capital dried up. After the 1960's, the only thing that is left in many of those communities-and the Secretary and I had many discussions about this-how do you rebuild the places where the cavities exist, where the buildings were torn down after the riots? Nobody came in to say, "Let's rebuild the communities by rebuilding the businesses."

Sadly, even as we built myriad numbers of homes, we did not have correspondingly any programs that allowed for the rebuilding of those commercial strips. You had Fannie Mae, and you had Freddie Mac. You had means of having a secondary market source that was able to provide the guarantees, and the SBA in many instances to provide the guarantees, to assure that you could build housing. But you did not have a source to guarantee that you would be able to build those commercial strips.

Banks ignored it, redlined it, and in many instances was responsible for the creation of the Community Reinvestment Program as we know it. Without Community Reinvestment many of those communities, as bad as they are perceptually from the outside, would be worse than they are even today.

My idea was that you begin the process by proving that these communities had the wherewithal to be able to demonstrate through investment that they could, indeed, turn the community around and participate in the fastest growing sector in American society; and that is, the small business sector.

I have created, from myself and a secretary in 1976 until this moment, 770 jobs. Many of these persons are former welfare recipients. We talk in this Congress about eliminating welfare as we know it. The reality is, what do you do when you eliminate welfare with persons who live in communities where there are no jobs, who do not have access to transportation to get to the suburbs where there may be jobs? How do you deal with the reality of those persons who are now going to be left behind?

As a clergyman you could rationalize it by just saying that the Bible says, "The poor you will have with you always. That is not a sufficient explanation. The reality, then, must be that this Congress and bodies who are involved with Corporate America and banks and insurance companies also must participate in a way to say, "OK, if we are going to eliminate welfare, on the one hand, let us at least talk about how you make investments, the same kind of investments that you would make anywhere else."

My years in New England when the Reuten Naval Base was in serious trouble, the Government stepped in and provided some support. When Chrysler was in trouble, the Government stepped in. When New York City was in trouble, the Government stepped in. It would seem to me that Americans all over this Nation would realize that it is not in their best interest to have the urban communities continue in the condition that they are in.

We can never jail enough people to solve the problems of the inner-city. One hundred thousand dollars a unit in a place like New York to build a jail cell, $30,000 to $40,000 to keep a person in a jail cell.

We need to make investments in communities like mine, in community school districts where you have whites on one end, blacks on the other; the poor on one side, the rich on the other side; the rich controlling a community school board, investing $6,000 in the white part of their school board, and investing $2,000 to $3,000 in the black part; computers that prepare the kids for the super highway information age on the one side, no books or books that are 20 to 30 years old on the other side.

Then you ask the question, why is crime so high? Crime is high because if you do not prepare people to be able to work, you do not prepare them to be able once they finish school to know that they have a possibility even of getting a job. The reality is we have failed them.

We do not participate in investments. Investment starts in education, investment starts in preschool, it starts in programs that allow students to understand that at some point they will not only be employees somewhere, but they have an opportunity to participate in this society as entrepreneurs.

The reality is that what I did was converted my church from just a spiritual entity to a business center. Out of that business center we developed our own jobs. We bought up every vacant store, every boarded up property near any place drug dealing was going on within a three- or four-block radius of where my church is. We built a 300-unit senior citizens apartment thanks to help from HUD. That started the process of a community reinvestment procedure that is still operative even at this very moment.

By buying up stores, we put tenants in them. Those tenants operating in those stores came in and made some investments. Those who have long ignored and abandoned those communities came back. Allstate Insurance came back. My church is building a Burger King right this moment; we are building a clinic right now; we are building a new $15 million church because we have to generate income.

We raised $4.2 million in tithes and offerings. We invested that, and that is our leverage. That leverage allows us to go to the banks

and say, "We are not here for a handout. We want you to give us $80,000. We have a $100,000 property to buy. We are going to put our 20 percent in. That is our downpayment. We want you to respond to us. All we want you to do is help us to leverage it."

The problem comes when the banks say, "We cannot participate in that community."

When I built a school, our own school-we decided we had to have a school-the congregation said, "The Government is going to do it?"

I said, "No, we are going to do it ourselves." I have 8,000 members-8,300 members now. I did not have that then. I said to them, "You represent what is the essence of the stock market. It is not General Motors, it is not Xerox, or IBM that is great. It is the fact that a lot of people take their little bits and put them together to make a whole lot in order that that company can survive."

I said to the congregation, "You will invest in yourselves by putting your money into the tithes and offerings. We will take your money, and we will invest it in the community. We will build our own businesses. We will buildup a community."

What happened? The Justice Department looks at me and says, "How could you do this?" They could not even understand it. Government has been there for every step we have made. The Government has been there to say, "You shouldn't have done it this way."

In these communities we are desperate. We are trying to do it the way it ought to be done. But myself and a secretary, we are not accountants, we are not lawyers, we are not CPA's. What we did was what we thought was the best way to get businesses going. I operated a charter bus company. We bought four MCI's. That company made $500,000. That is 10 jobs that would not exist. We have stores in that community, 39 jobs; 52 jobs in the school; 400 jobs in home care; over 30 jobs in our senior citizens' building. We built 61 homes.

We took people off the streets, not with the help of the Unions unfortunately-people off the streets-and put those people into the building of 61 units of housing. We are building 48 units of housing right now. Those will be homeowners. Homeowners stabilize a community.

Each homeowner will have rental unit. The rental units mean that we will provide not only for the persons who will provide stability because they work, but they are also individuals who will have a rental unit. By virtue of the rental unit, they qualify for a mortgage. Yet, the banks generally have come along very slowly, except for Community Reinvestment.

Jim Johnson, chairman at Fannie Mae said, "We will provide a guarantee for the homes."

We are building 500 units of housing. The banks came in. We then need to look in this Small Business Committee at how we might be able to develop a securitization process that allows for small businesses in all communities. Not just this one, but all communities like it, to be able to know that there is a secondary market, another GSE, if necessary, that takes care of the responsibility of assuring that in those kinds of communities we have the possibility of being able to create jobs.

I heard the Chairman's discussion on capital gains. He will tell you that long before the switchover here in Congress, I have been

one who has argued that capital gains working in conjunction with assurances that you provide a minimum wage, with assurances that you can provide adequate job training for people coming off of welfare would make sense. There are some of us who could support it if, in fact, there was an understanding that we were targeting it to meet the needs of those communities.

America would be a stronger Nation if we could all see that in those communities this fertile field of opportunity could, indeed, be turned around to make something very viable. Rather, we treat it like fallow land, fallow land that we can never grow anything on.

My argument is I have demonstrated through the number of students who have graduated from high school, every last one of them but one over the last 12 years has gone to college. Every last one of them tested out of a foreign language when they got there. Every last one of them got computer skills, starting at the preschool level. We can do it in the communities, but we need the benefit and support of the Government to help it happen.

I am talking about Government, not in a traditional social sense. I am talking about Government understanding its responsibility to serve as the leveraging process that assures that people who make an investment in those communities will not be penalized, that they will not be persons who will pay undue and unnecessary taxes, undue and unnecessary wages because that is a demand.

In certain communities that is appropriate. In other communities, where unemployment is high, if it is 6 percent in the Nation, it is 18 to 24 percent in an urban community; and it is over 50 percent for those young people who are teenagers. The reality is a Nation cannot survive. The Nation cannot continue to incarcerate its youth and expect to be a strong Nation.

I would go so far, and perhaps this is not the committee to talk about it in, to say that one of the great things that was lost-and my liberal friends would certainly never agree with me on this-one of the great things that America lost was the draft.

When they lost the draft, they lost the ability to take 17, 18, or 19-year-old kids off the street and put them into a disciplined environment. Three years later, when they came back, they had an educational benefit. They also had the ability to be able to buy VA homes. When they bought that first home, that represented an asset.

Most of these kids cannot build assets; they are still living with their parents. They cannot find jobs in the community, so they stand on the street corners and sell drugs. If we could only create jobs in those communities. The only reason I am building a Burger King is because it means that I have an opportunity to teach work discipline and work ethics to young people 15, 16, or 17 years of age, to let them know that they may have to burn hamburgers today, but tomorrow they can become the owner of a franchise.

What we need to do is find ways to franchise a population that feels that it is disenfranchised and has been written off in this generation as "generation X." We have already put a mark in front of them. We have said they cannot produce. We have said that they have no ability to perform; I would argue contrary to that, that they do have, if given the opportunity.

I look for Government to create opportunities. If you, Mr. Chairman, would work with me and others in helping to create those opportunities, we can not only develop a model community in Jamaica, New York, we can turn model communities in this Nation. We can generate for the Government tax revenues as opposed to putting the Government in a position where it has to spend its tax revenues to house these young men and these women in prisons.

I thank you for the opportunity to come. I hate that I went overtime, but Jack got me started here.

Chairman TALENT. I don't hate that you went overtime, because the vision you outlined at the end is, I think, what I hope we are developing a consensus that we want. I think it is going to take elements from a vigorous Government that works unleashing people in a manner that works. I mean, I think this committee obviously only has-this subcommittee and even the committee only has-a little piece of it, but that is what we are trying to explore. I want to leave plenty of time for questions. Let me go on to Mr. Bolick.

TESTIMONY OF CLINT BOLICK, VICE PRESIDENT AND DIRECTOR OF LITIGATION, THE INSTITUTE FOR JUSTICE, WASHINGTON, DC

Mr. BOLICK. Thank you. It is a pleasure to be here, but a daunting task to follow two preachers, one ordained and the other honorary.

Mr. Flake, I want to mention that we have recently commissioned a study on barriers to entrepreneurship in the one city on Earth that seems to have a lock on the market, New York City. We are doing it, in part, to help the Government deregulate entrepreneurial opportunities, but also to identify litigation opportunities, because what we do for a living is to sue bureaucrats. There is no more fun that a lawyer could have in that area.

I am privileged to be here with this distinguished panel and also to be here with three men who the Institute for Justice has had the honor to represent in the past few years: Taalib-Din Uqdah, Leroy Jones, and Art Pearson. These men are heroes in the fight for economic liberty, and there is no greater reward that an attorney could have than to be associated with individuals like these.

Chairman TALENT. If I can just interrupt you for just a second.

Mr. BOLICK. Sure.

Chairman TALENT. I understand you have to go, Mr. Secretary. We thank you.

Mr. KEMP. Yes. I apologize. I want to thank Floyd, though. That was eloquent. His church is a free enterprise zone. That is exactly what we are talking about. Just do it large, and we will solve the problem.

Mr. TALENT. We thank you for being here.

Mr. BOLICK. The task we commence today is the culmination, the realization of the civil rights revolution. Our Nation's moral claim is staked in its commitment to opportunity. Today, we hear a great deal about affirmative action, set-asides, diversity, entitlements. These are the sorts of quick fixes we look to as a consequence of failing to make good on the promise of opportunity, but ultimately they are an unsatisfying alternative to the real thing.

Ironically, today we are resuming a conversation about civil rights that started more than a century ago. When slavery was abolished, millions of black Americans were emancipated to pursue a brighter future as self-sustaining people. That promise was stamped out as Southern Governments manipulated by former slaveholders systematically denied the most essential and inalienable liberties: Freedom of contract, private property ownership, and freedom of labor and entrepreneurship.

Congress responded by enacting the 14th Amendment which protected these precious economic liberties as the privileges or immunities of citizenship. But in an 1872 decision all too aptly denominated the "Slaughter-House Cases," the U.S. Supreme Court eviscerated this promise, ruling 5 to 4 that the privileges or immunities clause did not add any substantive protections to the Constitution. Since 1872, that clause has never been used, never once ever to strike down an economic regulation, no matter how arbitrary or oppressive.

The perverse byproduct of this judicial abdication is that today the right to receive a welfare check receives greater judicial protection than the right to earn an honest living. That is a travesty in a free society. The results of this are devastating, particularly for those struggling to gain a toehold on the economic ladder.

For restraints on entry into businesses and professions are today more pervasive than they were at the height of the Jim Crow era. All across the Nation as Taalib-Din Uqdah will tell you, all across the Nation entry into professions from cosmetology to my own practice of law is shackled by occupational licensing laws enforced by members of the regulated profession with the coercive apparatus of Government at their disposal. These laws go far beyond public health and safety to instead restrict entry and limit competition.

Leroy Jones will tell you, city and State Governments create monopolies in such low-capital businesses as taxicabs, garbage collection and recycling, choking off opportunities for new entrepreneurs.

As Art Pearson will tell you, at the Federal level the Davis-Bacon Act by embracing prevailing wages and union job classifications destroys entry level job opportunities for unskilled workers and entrepreneurial opportunities for small firms. The net result is that the rules of the game are rigged hopelessly against people outside the economic mainstream.

Is there any wonder that young entrepreneurs in the inner city today are pursuing illegitimate enterprises like drugs, when traditional routes for upward mobility are circumscribed by arbitrary and misguided regulatory barriers?

At the Institute for Justice, we are working tenaciously to restore economic liberty as a fundamental civil right, rebuilding judicial protections step by step. Already the cosmetology licensing laws that nearly destroyed Taalib-Din Uqdah and Pamela Ferrell's Cornrows and Company right here in Washington, DC, were repealed after a 10-year struggle. In Denver, Leroy Jones' Freedom Cab this year will be the first new taxicab company to be licensed in Denver to operate in 50 years. It gives the notion of "freedom rides" a whole new meaning. But more is necessary.

This Congress and this committee can act by unshackling competition in the inner-city through enterprise zones which should en-

compass preemption of arbitrary local economic regulations. It can repeal the Davis-Bacon Act, and thereby open the door to tens of thousands of entry level jobs.

Pursuant to its enforcement power under the 14th Amendment, and this is where I would quarrel with the opening statement of Ms. Velázquez, this Congress does, in fact, have the jurisdiction and the power, and I would submit, the obligation under the 14th Amendment to the U.S. Constitution to enact an economic liberty act.

That economic liberty act would allow challenges to regulations on entry into businesses and professions that are not carefully tailored to legitimate health and safety objectives.

Mr. Chairman, the economic liberty is the cornerstone of empowerment, and empowerment is at the core of civil rights. Taalib-Din Uqdah, Leroy Jones, Art Pearson, and millions of other enterprising individuals deserve a chance to succeed or fail to the limits of their abilities and their ambitions. They deserve this chance not because of their skin color or their economic status, they deserve this chance because they are Americans.

Mr. Chairman, and members of the committee I hope that you will act to protect those basic liberties that are every American's birth right, every American's civil right.

Thank you very much.

Chairman TALENT. Thank you, Mr. Bolick.

Mr. Kirsanow?

Mr. FLAKE. Mr. Chairman, if you will, before he begins, I am going to the floor to make a 1-minute statement; and if you would excuse, I will be more than willing to receive whatever questions there may be in writing.

Chairman TALENT. Sure. In fact, I was going to invite you, it is your choice if you want to come and sit with the committee and ask questions. The Members would probably be interested in asking you some, but I will leave that up to you.

Mr. FLAKE. I will do that at another time. Perhaps, we can have a session. I think that would be good, and I will be happy to do that with you.

Chairman TALENT. That will be fine. Thank you.

Mr. FLAKE. Thank you.

[Mr. Bolick's statement may be found in the appendix.]

TESTIMONY OF PETER KIRSANOW, LABOR COUNSEL, LEASEWAY TRANSPORTATION, CLEVELAND, OHIO

Mr. KIRSANOW. Mr. Chairman and members of the committee, thank you for inviting me to participate on this panel. In trying to determine what type of remarks I ought to prepare for this panel, I was somewhat daunted by the task because there are so many regulations that inhibit the formation of capital, inhibit businesses of any nature: Small, big, owned by women, men, minorities, by majority populations. I have decided I will zero in on just a few regulations that are near and dear to me.

The effect of the proliferation of regulations on small businesses and the attendant blizzard of statutes, regulations, Executive Orders, rules is perhaps best summed up by de Tocqueville's familiar observation that "The species of oppression by which democratic

nations is menaced is unlike anything else which ever before existed in the world. It does not tyrannize but it compresses, enervates, extinguishes and stupefies a people until each nation becomes nothing more than a flock of timid sheep of which the Government is the shepherd."

I would respectfully disagree that this is only a local issue. Federal regulations promulgated under a number of Federal statutes such as the Family Medical Leave Act, Americans With Disabilities Act, EPA, OSHA, the Older Workers' Benefit Protection Act, you name it. They all may be well-intended and have varying degrees of utility, but each of them suffocates small business by raising the cost of doing business and by making it more difficult to do business.

The cumulative effect, as you have already heard, is to raise pretty formidable barriers to entry. Many of those barriers are arbitrary, capricious, and artificial. The regulations affect all businesses, but they have a particularly pernicious effect on small businesses, on businesses that are marginally capitalized, are labor-intensive or are perceived as being credit risks.

A disproportionate share of those businesses are owned by minorities and by black Americans especially. In decades past, the poll tax limited or chilled black voting rights. In the mountains of regulations that the Government is spewing forth on the Federal, local, or State level really constrains small black businesses in almost the same fashion. They limit entry into the marketplace or hasten departure therefrom.

By their very nature, regulations are applied to business in an inflexible and cookie-cutter fashion. It seems that the agencies presume that all businesses are the same: They have the same capital requirements, they have the same personnel, the same type of labor requirements, the same type of geographic location or market.

There are five primary barriers to entry that are established by regulations. I will briefly mention four of them, the fifth I am more familiar with because they deal with labor costs. This is not to diminish the effect of the first four that I will mention. The first barrier to entry is paperwork. It has already been mentioned.

The paperwork requirements that I deal with in my profession are nothing less than daunting. Just to hire someone requires a minimum of eight forms. The Davis-Bacon Act's Orwellian reporting requirements make some businesses reluctant to pursue public works' contracts. The manhours spent on regulatory paperwork is a substantial drag on productivity, and therefore profit.

Legal costs are the next barrier. Anyone with the typical statutory threshold of 15 employees needs a lawyer to sort through the maze of often conflicting regulations that may apply to a particular business. While public policy should not be based on anecdote, I would like to present one to you that reflects what I call the "information overload cost"; that is, even the most savvy businessmen must be necessarily ignorant of a large percentage of the thousands of regulations that might be applicable to his particular industry.

I recently made a presentation at an FMLA, Family Medical Leave Act, seminar. Afterwards, one of the attendees approached me and said that he was unaware that under the act he could re-

quire that an employee first exhaust sick leave before utilizing family medical leave. That may seem minor to some people here, but to a small businessman that can be devastating.

At another seminar another businessman told me that he thought that the ADA, the Americans With the Disabilities Act prohibition against discriminating against rehabilitating or rehabilitated drug users required that he reasonably accommodate current drug users. The implications of that misapprehension are pretty frightening.

Speaking of the mountains of regulations, just a few days ago the EEOC issued a 56-page memo just defining what "disability" means under the ADA. Now, lawyers may have time to do that, but a businessman is out there to run his business, not to see what bureaucrats at the EEOC think about disability or what it means. It is in "Webster's," look it up.

Mr. KIRSANOW. The third barrier is actual compliance costs. Fees and licensing for certain occupations are a deterrent to entry therein. ADA mandates require frequent utilization of physicians or use of NIDA-approved labs. OSHA requirements require that you frequently enlist the use of ergonomics' experts and engineers.

Another anecdote, a client that I have recently underwent an OSHA inspection. It had to do with his dock plates at a trucking facility. Now, for 25 years this particular person had no problems whatsoever-no complaints, no injuries. Yet, an admittedly disgruntled employee in a spiteful mood sicced OSHA on this particular employer.

Suffice it to say, no violations were found, but he had to expend $2,000 in legal fees, $1,500 in ergonomic experts reports, and 40 or 50 lost manhours. Now, admittedly, that seems relatively minor. GM can afford to absorb costs like that every day, but one or two OSHA inspections will put mom and pop out of business.

The next barrier is the cost of risk or the cost of managing risk. That includes the reserves that are necessary for most businessmen for fees and forfeitures, for the inspections and investigations, and for the threat of litigation.

Finally, black businesses are, in particular, very labor-intensive. You raise the cost of employing someone, and you raise the cost of doing business. Regulations often make employees more expensive than the value of their labor. Direct employment costs associated with the regulations, the Federal regulations, under workers' compensation, unemployment compensation, minimum wage, the FMLA, Naturalization and Immigration, according to the Bureau of Labor Statistics, have over the last few years raised the cost of labor by 30 percent. That does not include the indirect costs of the ADA and the Fair Labor Standards Act and the FMLA.

The cost to employers of administering, just administering, the Davis-Bacon Act has been estimated at $2 billion. That does not include the paperwork costs of $200 million. That is $2,200,000,000 for a racist, discriminatory, and inflationary policy. Total administration costs for the FMLA and the ADA are off the charts.

I have not seen any credible estimates for those. But anytime a small business must make accommodations, again in a cooker-cutter approach, it is going to be in the thousands of dollars; and for

larger businesses, in the millions of dollars. That is bad for black employers, as well as employees.

Forty years ago, it was mentioned, during Jim Crow, during legally sanctioned racial discrimination in employment, the unemployment rates for black youth and white youth were virtually identical. Today, after Title VII, after various rulings by the Supreme Court, after affirmative action and set-asides, and the erection of a mammoth apparatus for the enforcement of civil rights laws black youth unemployment dwarfs that of white youths, and approaches 67 percent in some areas.

When faced with federally mandated increases in the cost of labor, an employer only has four options really, and one is to automate. Machines do not ask for overtime, and they do not file workers' compensation claims. The other is to relocate to areas with less burdensome regulatory requirements; the third is to hire temporary workers; and the fourth is to lay off employees. For reasons I will not go into in detail, the only effective option for most minority and small businesses is the fourth option; that is, to lay off employees.

The net effect of all of the regulatory burdens is to steer some small black businesses into set-aside or affirmative action ghettos; that is, that small businesses cannot readily absorb the federally mandated increases in the cost of doing business and still compete with dozens or maybe hundreds of businesses in that particular industry. Instead, they seek refuge in set-asides, where they only have to compete against one or two or maybe no other businesses.

It is similar to a kid who is on training wheels. He is afraid to take the training wheels off, and he leaves them on for a long time. Once he takes them off, he is a 12-year-old kid who is falling down all the time.

I would like to make five modest recommendations to this committee as just a starting point.

Chairman TALENT. Mr. Kirsanow, if you could just do it briefly, because we have a lot of questions.

Mr. KIRSANOW. Sure. First, is to presume that every regulation constitutes a taking. It is a rebuttable presumption, but one that the agency promulgating the regulation should bear. Second, continue a moratorium on all regulations but the essential safety regulations. Now, to suggest that is not heresy. We may have as many regulations as we need right now.

Third, raise the threshold for the application of the regulations to certain businesses, whether it be by dollar volume of their income or by the number of employees that they employ. Fourth, repeal the Davis-Bacon Act. Five, where there are frivolous inspections or investigations by agencies, make the agency pay the employer's costs or the company's costs for trying to defend against that frivolous investigation or inspection.

Thank you.

[Mr. Kirsanow's statement may be found in the appendix.]

Chairman TALENT. I thank you. We have certainly had a range of opinions offered, which is what I wanted. We are going to go to questioning now. I am going to, except for Ms. Velázquez, enforce the 5-minute rule. She will be going first, and then by order of appearance here we have got Ms. Kelly, Mr. Wamp, and then Mr. Lu-

ther. I am going to hold my questions until you all have finished yours. We do have another panel that is coming up.

Ms. Velázquez?

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I am sorry that Mr. Kemp had to leave. I just wanted to remind him that Dr. King was killed on a picket line during a strike of sanitary workers fighting for higher wages. I wanted to salute him and commend him for bringing his name here. Also, he mentioned that Luis Munoz Marin, former governor of Puerto Rico, he was the person in charge of creating an economic model for Puerto Rico for industrialization known as "Operation Bootstrap."

It happened to be that Puerto Rico has the highest unemployment rate in the Nation, close to 30 percent. Yet, American corporations are doing business in Puerto Rico. They get tax incentives; and for jobs creation, they get $70,000 for job creation. It seems like former Governor Luis Munoz' economic model did not work in Puerto Rico. It has not worked, and it will never work.

They are making the money and running away with the profits. They are not reinvesting in Puerto Rico. That is at the center of Mr. Kemp's and Mr. Flake's testimony today. What they said is that the main problems for minority entrepreneurs is lack of access to capital. I just would like to ask Mr. Kirsanow?

Mr. KIRSANOW. Correct.

Ms. VELÁZQUEZ. I can appreciate the barriers that you list that pose problems for small businesses. I just would like to ask you, how do you respond to the agreement by Mr. Kemp and Mr. Flake that the lack of initial capital is the major obstacle to creating businesses for minorities?

Mr. KIRSANOW. I think that is one of the obstacles. I am not sure that it is the major obstacle or the only obstacle. I think that there are a number. There are cultural obstacles, for example; there are historical obstacles. There is still discrimination out there, and anyone who blinds himself to that is being a fool.

But right now, as I indicated in my statement, someone needs to examine why it is that we have such a high unemployment rate, and I am speaking only in terms of the black community right now, in the black community when all of these "salves" have been passed. All of the things that 30 years ago people were saying were the only things necessary to remedy the problems in the black community.

All of those things have been done. There is nothing else that can be done on a legislative plain. Yet, we have a higher unemployment rate, pathologies that we witness in the black community are more pronounced than they were 30 or 40 years ago.

Ms. VELÁZQUEZ. Are you telling me that redlining and red tape and lack of financial services does not exist in the minority communities?

Mr. KIRSANOW. I never said anything like that, no. I am not here to say that those things do not exist. I will acknowledge that there is discrimination. I personally do not have any professional knowledge of those things, so I cannot speak as to redlining. I do know that there is discrimination out there. I think almost everyone who is of color has experienced it at some point.

But, as I tell my own children, that is 1 of the 40 or 50 hurdles you are going to have to face in your lifetime. Today, in 1995, thanks to the hard work done by their parents, grandparents, and all other Americans that may be the 30th or 35th in the list of priorities as to the obstacles they are going to face in their lifetime.

Ms. VELÁZQUEZ. How do you balance the protection for workers with the needs of small businesses?

Mr. KIRSANOW. I think that the best protection a worker has is a job. When you raise the minimum wage to a level where someone is not going to be employed, what good is a minimum wage? In my own experience, I have had small businesses, my father had a small business, I have clients who have small businesses. They get to a point where the minimum wage is raised higher than the level of worth of the person that they are employing, then the person does not have a job anymore.

The minimum wage is great if you have a job, but it is not if you do not have a job. In the black community after minimum wage increases had risen very steeply after 1954, so did the unemployment rate. As I indicated in my opening statement, what we had in 1954 was identical unemployment rates for black youths. Those are generally the individuals, young people, who are going to be receiving the minimum wage-identical. Now the minimum wage goes into effect, three times as many black youths in some communities are unemployed as opposed to white youths.

Ms. VELÁZQUEZ. Would you suggest to abolish all protections for workers?

Mr. KIRSANOW. No, not at all. I just think that it is essential that we get rid of many of the suffocating, paternalistic regulations and statutes out there that are doing nothing but harming people. There are several of them. I think that it is extremely important to have protections in place. We have seen through history that was necessary, but I think we have gone overboard.

Ms. VELÁZQUEZ. Mr. Bolick, you spoke about entry level jobs. Do you think that that is the way to empower communities?

Mr. BOLICK. Absolutely. I think that traditionally almost every person who has succeeded in our American society, going way back hundreds of years, has been through climbing the economic ladder. Very few people come to this country or have ever come to this country with a large amount of capital.

Ms. VELÁZQUEZ. Where is the scientific, objective data to support your comment, entry-level jobs will empower communities?

Mr. BOLICK. I think that the evidence on that is abundant, so much so that I think that it has become common sense. If one has no skills or job experience, there is no way to leapfrog that person into an economic status.

Ms. VELÁZQUEZ. Well, that is not what Congressman Flake was stating here. What he was talking about is not about lowering the wages of the person but to enable that person with the tools that will enable them to become self-sufficient.

Mr. BOLICK. I couldn't agree more. Let me give you a concrete example of the devastating impact of economic regulations by the Federal Government in the context of the Davis-Bacon Act. The Institute for Justice is currently pursuing a constitutional challenge

to the Davis-Bacon Act, which Mr. Kirsanow accurately described as a law with racist origins.

Under legislation that was sponsored by Jack Kemp and others, tenants of public housing are given a priority in employment opportunities in public housing. In other words, if you were to have a construction contract at, say, Kennilworth Parkside here in Washington, DC, employers who have the contracts are obligated to prefer residents. The reason is because there is a high unemployment rate and a low skill and work experience rate in those communities, not surprisingly.

As a result of Davis-Bacon wage requirements and job classification requirements, which make helpers, the use of helpers, on Davis-Bacon contracts illegal. We represent public housing tenant management organizations that have not had a single resident hired as a result of Davis-Bacon on construction projects within public housing complexes. This is where the "engine of regulation" drives out the ability of low income people to gain access to job opportunities.

Ms. VELÁZQUEZ. Yes. Mr. Bolick, I think that you are familiar with the National Apprenticeship Act?

Mr. BOLICK. Yes, slightly.

Ms. VELÁZQUEZ. I assume, then, that you know that it grew out of the Davis-Bacon Act, and that it provides 20 percent of the minority workers in this Nation with a chance to learn a skill and obtain higher paying jobs. Are you familiar?

Mr. BOLICK. I am familiar with the legislation. I am also familiar with the fact that under the Davis-Bacon Act opportunities for apprentices are limited by law to the number of apprentices that Unions hire in a particular area. I am also aware that when the Bush Administration issued a regulation that would allow for the first time the use of unskilled helpers on construction projects that that regulation was attacked in court and repealed in the current administration.

I know, finally, in parallel to what Mr. Kirsanow said, that at the time the Davis-Bacon Act was enacted the unemployment rate in the construction industry between blacks and whites was virtually identical. Now the black unemployment rate in the construction industry is over twice as high as the white unemployment rate in the construction industry, notwithstanding or perhaps as a result of the Davis-Bacon Act.

Ms. VELÁZQUEZ. Are you familiar with the University of Utah study on the effects of repealing Davis-Bacon Act?

Mr. BOLICK. I am not.

Ms. VELÁZQUEZ. Well, let me quote something for you from the study. It says that "Experience from the State repeals indicates that formal apprenticeship training in construction will fall by about 40 percent if the Davis-Bacon Act were repealed. This," again I quote, "will hurt minorities the most."

Mr. BOLICK. I think any study that would reach that conclusion is absolutely ludicrous. The Davis-Bacon Act by its effect limits entry level, unskilled job opportunities. Anytime you have a society, as we do right now, where members of minority groups are disproportionately represented among unskilled or low-skilled workers, it is going to have a devastating impact to cutoff those kinds

of job opportunities. I have not looked at that study. There have been a number of studies over the years commissioned and supported by labor unions that seem contrary to reality. I do not know whether this is yet another one of those or not.

Labor economists on both sides of the aisle, I would submit to you, for example, the National Association of Minority Contractors, which is hardly a conservative organization is on record as talking about the devastating impact on minority entrepreneurs and workers of the Davis-Bacon Act.

Ms. VELÁZQUEZ. On the contrary, the Congressional Black Caucasus is strongly supporting the Davis-Bacon Act.

Mr. BOLICK. I know and that is very, very troublesome.

Ms. VELÁZQUEZ. The NAACP also, a national organization is also supporting Davis-Bacon.

Mr. BOLICK. Perhaps, that is one of the reasons why the NAACP has lost so many members in recent years.

Ms. VELÁZQUEZ. What was that?

Mr. BOLICK. I'm sorry. Perhaps, that is why the NAACP has lost so many members in recent years.

Ms. VELÁZQUEZ. I do not think that is because of that. I think it is because of internal problems.

Thank you, Mr. Chairman.

Chairman TALENT. I thank the lady for her very insightful questions.

Ms. Kelly, I believe, is next.

Ms. KELLY. Thank you, Mr. Chairman.

Mr. Kirsanow, I have faced some of the problems you have raised as a small businesswoman. I have had to make choices about whether or not to hire and fire people based on the minimum wage. It is not an easy choice for small businesses to make, because these are real people who we deal with.

I am very interested in a comment you made about the effect, the joint effect, of Federal laws has been to produce "black business ghettos." This is not a good thing for us to have the Federal laws doing. It does not serve our business community as a whole well to have that happen. I wonder if you would be willing to address that further? You were kind of rushed when you made that remark.

Mr. KIRSANOW. I think former Congressman Kemp has spoken eloquently on that issue, in terms of enterprise zones. I am not necessarily a fan of enterprise zones, per se. I would like to see the entire United States be an enterprise zone.

My own experience growing up in Cleveland, Ohio, and still living in Cleveland, Ohio, is that when I was growing up there were a number of black businesses, mom and pop, small businesses, all over the place. To get a haircut, to get your car washed, you went down the street. There was a laundry and there were grocery stores; they had everything. Now I understand that throughout American small businesses have been harmed by the Walmarts, and so on and so forth, but there are still lots of small businesses out there.

Now, there are a lot of reasons beyond simply Federal regulations and statutes for the expansion of the vast urban wasteland we have in many inner cities. I would submit that one of the prin-

cipal reasons is that it is extremely difficult now to be a businessman anywhere.

If you are a black businessman with all of the additional obstacles that you have to face-and one of the major obstacles obviously is capitalization-those Federal regulations are the trip wire. They are the straw that breaks the camel's back, so that you cannot sustain a business for long or it simply stifles you or inhibits you from even going into business.

In Cleveland, a lot of the politicians and pundits would say that one of the reasons why you have so many wastelands, as I indicated, was because in the 1960's there had been riots. After the riots no one wanted to have businesses there. Well, most of the businesses were black. They were not going anywhere.

I understand that crime and the crime tax is one of the reasons why businesses have fled or decided to shut down or not open up in the beginning. But Federal regulation also expanded contemporaneously with the disappearance of business.

I think it would be interesting to study, and a number of studies have been done, whether or not those two factors are corelated. I believe that they are. There are a number of statistics and studies that show that they are.

As you have indicated, my own personal experience is that when the minimum wage goes up, and I am only talking in an anecdotal framework right now, but I believe it was the Bureau of Labor Statistics, approximately 6 or seven years ago came out with studies-not studies but statistics that would show that for every 10 cent increase in the minimum wage, approximately 50,000 jobs were destroyed. Who knows how many more were inhibited from even being created?

Anecdotally, when my father's own small business was still in existence and the minimum wage would go up, there would be a person who would disappear. A family member would be hired to replace that person.

That is not good. It is good for someone who, thank God, kept his job. It is good for the people in the job classifications immediately above that person, because the wage level would get bumped up so you can maintain the strata that is developed through seniority and for other reasons. Eventually, everyone is going to be harmed by that.

Ms. KELLY. Thank you very much.

Chairman TALENT. Mr. Wamp?

Mr. WAMP. Mr. Chairman, thank you.

As a member of the Speaker's Task Force on Minority Issues and as a freshman Republican Member who has a higher percentage of African-Americans on my staff than I have voters or people in my district, practicing what I preach, and as a Member who came with a strong civil rights background, active leadership with the United Negro College Fund, the Urban League in Chattanooga, the M.L. King Redevelopment Corporation, and a track record to this process, I welcome everyone here to this debate today.

I say that if I could, humbly and respectfully, request as we begin this debate in Washington over the coming months and even years that people try to check your attitudes at the door, so that

we can have a good, honest, decent, forthright discussion as Americans, as human beings about this issue.

I particularly would like to offer my appreciation for some courageous people, in my estimation, who are minorities within a minority, being anyone who believes in conservative policies within the African-American population are really in a box. They are a minority within a minority. They still have all the disadvantages in our society of being black, and then they have the disadvantages within their own friends of being conservative. It takes a special kind of courage.

Peter, I want to commend you and others for doing that. What we are trying to do is separate the mythology and the emotion from good, sound public policy. As we do that, I think we need to be careful to look at some of the cause and effect. I want to ask a question that may not even apply directly to regulation and paperwork, what we are here to address.

Chairman TALENT. I will say to the gentleman that after Secretary Kemp's testimony we have gotten so far away from regulation and paperwork, that I do not think it matters.

Mr. WAMP. Thank you, Mr. Chairman. That is right, I will follow down that line. Madam Minority Ranking Member, let me say to you that many of these are local issues, but that does no mean that we cannot on a Federal level address the real problems and collectively develop consensus on what needs to be done all the way to the bottom of the spectrum.

Ms. VELÁZQUEZ. May I?

Mr. WAMP. I yield.

Ms. VELÁZQUEZ. I thought that that was contrary to the spirit of the unfunded mandate that we just passed in the House.

Mr. WAMP. Your point is well taken. I understand the difference, reclaiming my time. But simply to say that we closed our only vocational educational institution in our city school system. I am strongly encouraging the development of vocational education as an option, so that entry level kids have some hope in our local school systems.

They can say when they are in the 7th and 8th grades, "I am not going to have to go all the way through college or graduate school to have a job," and many of them do. They lose that hope right then and there, instead of thinking, "If I could just get through high school, I would have a decent job. If I could just claim that one technical expertise."

We have got companies, manufacturers particularly in East Tennessee, that are asking those school systems to develop high school level vo-tech programs so that in 4 months they can teach them the trade on-site, in the school for exactly what they will be doing a month after they graduate at a decent entry level position. These are the kinds of solutions to developing some hope in our inner-cities.

I also want to say this, and just kind of open it for discussion, if either of you want to comment on this, because it is not a direct question. I had a big summit last week in East Tennessee, and we had a guy come in that has just done marvelous things in Chattanooga. We are turning a brownfield site, an old glass plant, in

the heart of an African-American community called Alton Park, in Chattanooga, turning it around, redeveloping that brownfield site.

In that area we have got environmental problems now. We have African-Americans that have concentrated to that low-income level. They cannot climb out of that area. They are living in that area, and the major manufacturer left. The place is just, like, running down by the hour. We are going to rehabilitate that brownfield site and try to put it back into practical use, shooting and infusing life back into this area.

The guy said what I think President Clinton said on the campaign trail, "It is the economy, stupid."

He said, "In this day and age, it is the economy, stupid."

It is the cities, as Secretary Kemp and others have articulated, where we have this kind of erosion and this kind of collapse is in the cities. We are not a city with the kind of problems of-I will not name others, but other cities that are well-known that are much larger that have problems.

In this small way, Chattanooga has taken a quantum leap in the right direction on turning brownfield sites around, addressing the environmental problems of the industrial legacy from the past, and then trying to educate children is what I am encouraging on that level. Comments on developing good, sound policies in these areas?

Mr. KIRSANOW. I am all in favor of policies such as that, but if I could simply-I may be revealing my ignorance with respect to history. But I think someone asked, I believe it was Frederick Douglass, "What shall be done with the Negro?"

He said, "Do nothing with the Negro. Your doing with him has gotten us into the position that we are in." That was during slavery.

I think the individuals from the Institute of Justice are simply saying, "Do not be paternalistic. Unshackle us." We can do everything that anyone else can do, provided it is an even playing field. We do not want any special advantages. We are not little babies. We are just as capable as anyone else. To the extent you treat us that way, that is how people are generally going to act, the way they are treated. With respect to vocational programs, I have no problems with those.

Let me just give you just another anecdote. Years ago, I was chief labor counsel for the city of Cleveland. There was a Federal, and there still is, policy in effect, the Job Training Partnership Act, a laudable program. Everyone liked it. I think it was an improvement, a quantum leap improvement, over CETA, where we spent billions of dollars and employment rates actually went down.

A study was done with respect to the Job Training Partnership Act, which was partially sponsored by Republicans. Lo and behold, an individual, similarly situated individuals-same background, educational level, income level, training, so on and so forth-to the extent you could find someone like that, or two people like that, one of those individuals would go into Job Training Partnership Act and another individual simply went his own way.

It was revealed that the individual who went into the Job Training Partnership Act was, and I forget the percentage points, less likely to be employed 2 years later than the employee who did not

go into the Job Training Partnership Act. Individuals who are self-empowered will do what is necessary to survive.

That does not mean there is not a role for Government. As Congressperson Velázquez says, there is a great role for Government. However, individuals by themselves will always exceed, more often than not, what Government will try to do to them by leaps and bounds.

Mr. WAMP. I would echo that. Some of the most exciting things that are happening at the local level by both Democratic and Republican administrations involve precisely that, transferring power from Government and the bureaucracy to individuals.

Two examples of that are tenant management of public housing, which is happening right here in Washington, DC, and elsewhere. Another to cite is Puerto Rico. We had talked about a previous governor, but the current governor, Governor Rossellθ, has championed an educational reform program that has turned public schools over to the communities, and vouchers to parents. The educational opportunities are accelerating and expanding as a result.

Mr. WAMP. Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman.

I am going to take a couple of minutes and just ask some of the more urgent questions that I had. I do not know what your schedules are, perhaps you could be available later. I do not want to postpone this second panel any longer than I have to, but I may have some more questions for you later, if you are available, otherwise I can do them privately.

Since I have a lot of questions, I will cut to what I think are the most important ones. Mr. Bolick, it has to do really with your proposed Economic Civil Rights Act. I think we have to be sensitive to the concern Ms. Velázquez raised about local and State discretion. I mean, I think it unlikely that Congress is going to preempt licensure laws on a broad basis, and probably it is inappropriate to do that certainly as a first step.

Let me ask you a couple of questions about what you have proposed. There are a lot of barriers to entry that the States may raise that are the result of assumptions about economic policy, for example, with which I may disagree, but which a lot of people do not disagree with.

For example, they may say-just pulling one out of midair-a physician cannot get into the business of running physical therapy clinics because he refers people to physical therapy. The whole idea of tying, as a theory of monopoly, in order to prevent monopolistic practices, the States may raise barriers to entry. There are other preferences the States may raise which have the effect of being a barrier for veterans' preferences, for example.

Now, one question I want to ask you is, would your Economic Civil Rights Act make that impossible for the States and localities to do? If so, is there some way of making it more limited to allow that?

The other thing is, is there some way we can identify occupations, trades which are the most frequent in an unregulated environment that would be the most frequently used by minorities and, indeed, disadvantaged Americans from all ethnic and racial backgrounds as a means of upward mobility and perhaps clear the way

on those, where the barrier to entry is less likely to be serving some neutral philosophy? Would you comment on that please?

Mr. BOLICK. Well, I would start with an anecdote from Mr. Uqdah, who will be testifying on the next panel, when he confronted the array of regulations and limitations on access into the hair braiding profession, he observed that they were not after all doing brain surgery. There is a big difference between hair braiding and brain surgery, but you would not know that necessarily, given the regulatory apparatus that had been developed around that profession.

What we have in mind with the Economic Civil Rights Act is simply this, if an individual tries to break into a profession and is prevented from doing that because that individual is black or female, that person will have access to the Federal courts to say, "Listen, you cannot do that. It is a violation of my civil rights."

If that same person goes in and says, "I cannot start a taxicab business, because the existing companies own this Government and this regulatory board and they refuse to allow any newcomer to come in," and that person goes to Federal court today, that person will be shown the door very promptly.

That, too, it seems to me, is a violation of that person's civil rights, as understood by the framers of the 14th Amendment. They understood that that was exactly what these Governments were doing was preventing people from using their skills and gaining entry into the marketplace, and that is a denial of civil rights.

I would never propose the Federal preemption of licensing laws. The kinds of laws that go to public health and safety are explicitly delegated to State and local Governments and there should be no disturbance of that. This is a very modest objective, and that is simply, that if the Government denies entry, completely denies entry, into a chosen profession or a business, the Government merely has to justify that regulation as being in some manner related to public health or safety objectives.

If it can do that, the fact that it drew the line in one place rather than another would not be suspect. But if it drew that line to protect the monopoly that currently has it, that is illegitimate, it seems to me. The law should give recourse to people like Uqdah and Jones in that kind of context.

I cannot remember the last part. Oh, are there some professions? Yes. We have been focusing at the Institute for Justice on the bottom rungs of the economic ladder. Jobs and professions and businesses like taxicabs, like garbage collection, like construction industry jobs that traditionally have provided upward mobility for people with either little capital or few skills. A catalog of those and the regulations that prohibit entry or restrict entry is exactly what we are about.

Chairman TALENT. I would be very interested in that. I appreciate Mr. Wamp's statement about "Checking our attitudes at the door." I do not think it is possible, or maybe appropriate, to do entirely. I mean, we are all here because we have attitudes. This problems is so great that we all have to be at least open. I mean, those who come from a strong conservative background, as I do, have to be open to the issue.

Look, can Government by influencing private investment make a difference here? If we are reasonably certain it will work, I think we have to be open to it. Similarly, maybe people of the other persuasion have to be open to the fact that maybe Government backing off in a particular area, if it makes a difference, will really help.

If we can formulate that kind of a list, these are jobs, the key you said to me was, they are areas that require limited capital. Until we can solve the problem of capital, if we can clear the areas, clear entry to jobs that do not require as much, like taxicabs, we can maybe make a real difference.

I do not want to take up time that really ought to go to the second panel. If you two could stick around maybe, because there are a couple of other questions I would just like to ask for the record. If that is a problem, let me know, and we will do it another time.

Ms. VELÁZQUEZ. Mr. Chairman?

Chairman TALENT. Yes?

Ms. VELÁZQUEZ. I just would like to ask unanimous consent to insert for the record a study that I made reference to before, and also another study that was conducted by the Cornell Institute for Women and Work and the Institute for Women's Policy Research to be included in the record.

Chairman TALENT. Sure, without objection.

[The material may be found in the appendix.]

Chairman TALENT. All right I thank you two gentlemen very much and again want to reiterate the committee's gratitude to you and to Mr. Flake and Mr. Kemp for being here. We will call the second panel up if they can come.

Chairman TALENT. All right. Well, there is only Ms. Velázquez and myself left, but I can assure the three of you have our undivided attention. Other Members will be coming in. That unfortunately committee hearings are often scheduled on a conflicting basis and Members have to come back and forth, but I certainly hope and believe some will be dropping by.

The second panel, I want to thank all of you for being here. I know that you are all engaged in occupations and important leadership roles in the community, and I do appreciate your taking the time to come here today. I will just introduce all three of you first, and then we will go to Mr. Jones first.

Our first witness will be Mr. Leroy Jones, the president and founder of Freedom Cabs, Inc., from Denver, Colorado; Mr. Taalib-Din Uqdah, the co owner of Cornrows and Co., in Washington, DC; and Mr. Art Pearson, the sole proprietor of Art Pearson Electric and General Contracting Co., from Tacoma, Washington. I thank all three of you.

In addition, Ms. Aleta Robinson-Wilson, who is the chairperson of the National Association of Minority businesses was scheduled to testify today. She had a last minute conflict and could not make it. I do have her written statement, and without objection I will submit it for the record.

Mr. Jones, if you can and feel comfortable doing so, please summarize your written testimony. Go ahead.

TESTIMONY OF LEROY JONES, PRESIDENT AND FOUNDER, FREEDOM CABS, INC., DENVER, COLORADO

Mr. JONES. My name is Leroy Jones, and I am from Denver, Colorado. I am really quite embarrassed to talk about my situation, because even though it means a lot to me personally and it affects a lot of Americans like me, the real issue is conceptually larger. Whenever I get a chance to speak to people, I am glad to have the opportunity to tell them of my plight.

Listening to the people who spoke here today, I really feel that I agree with what has been said, but I think it needs to be conceptualized. Economics as far as me as a small businessman, as a taxicab owner, regulations of Government, as far as what problems it has caused me in getting my cab company, really does not reach the level of which we should be talking on this subject. It is more of, what is good for America? How do we keep society and the concepts of what it means to be an American alive.

As I see it, as I have felt it, as I have experienced it, it is all based on economics. I will say that by giving the example that during slavery times the thing that kept slaves, slaves was not the color of their skin, but the laws that were passed that said they could not own property and they could not own money.

Nowadays, I am very upset because I believe in America. I believe in the system. I believe in the dream that has been promised to me and my children, but I do not see the reality of it. It is hard for me to teach my children to believe in that dream, to convince them that it is worthy because I do not see the practice.

We all say the pledge of allegiance. We all say, "I pledge allegiance to the United States of America," and we finish it up with "liberty and justice for all." I am afraid that all I see in "justice" is j-u-s-t u-s, just us with money. All I see in "liberty" is j-u-s-t u-s, just us with liberty with money.

I look at all the other Americans that bought into this dream that are saying there has to be an outcome for me to believe in it. No system can exist without you believing in it. It cannot function and it cannot work.

I look at our Government and I see this duality of practice and speech. I see them say, "We want to solve your problems. We want to do this. We want to help you." Then I look at the practice, and it is always the opposite of what they say.

There is a saying that says, "Who is the enemy? The enemy is us." We have a Government that is formed by the people, for the people." Yet, it hurts the people. We have a system that we say is free enterprise, and yet we deny free enterprise every turn of the page. We protect everybody else at the expense of other Americans. We get justice for everybody else at the expense of the other Americans.

I look at Africa, it is one of the most richest continents that exists. The reason why there is nothing that is ever going to come of that continent is because of the tribalism that is practiced throughout that country. It cannot be overcome.

We in this country say, "One Nation-indivisible," and yet we do not practice that. We continue to divide this country up and make divisive programs that will disallow us from ever becoming the true ideal of what we speak. We have all become tribal. It is, "Am I a

conservative? Am I liberal? Am I a Democrat? Am I a Republican? Am I black? Am I white?" Am I all these things. We say this pledge every single day, and it says, "indivisible." We are Americans. We are here with a Government that is not supposed to work for its own fulfillment, but for the fulfillment of the people.

Now, I have heard everybody speak on economics, and I agree with them. Economics is the very fabric which this whole country is tied together. Our framers of the Constitution made this an experiment in history by guaranteeing us the right to own property and to do business, not to work for somebody.

A free man did not have to work for somebody; and, when he did work for somebody, they called that indentured slavery. Somehow the concept of our lives has gotten to the right to have a job is the be-all and end-all of everything, and it is not: It is the right to do business.

Starting a cab company in Denver, I had to get a law changed-with no money. It took me almost 4 years. After that I went to the banks to get money to capitalize my business. I was told I had to be in business for 18 months. I then had to go to a hearing for 6 months at the Public Utilities Commission that cost me over $85,000, just to get permission to have a company.

Now, after I've gotten permission and I am trying to open up my doors, I go to the insurance company and they say, "We will not insure you, unless you put a $50,000 bond down to guarantee that you will pay the first $5,000 on any accident claim," when the Public Utilities Commission's law says that the insurance company that you get should have to pay the first dollar.

There are only 11 companies in the country that will insure taxicab companies, and only three that are licensed in Denver. As a person with no collateral, no money, and no history I have gotten to this point. I am very frustrated, but I am still going to open my business and I am still going to succeed in spite of all of those things.

People look at me and say, "Well, wow, you have done a great thing. How could you stick with it?" If I had known what it was, I would not have stuck with it. It was just piece, by piece, by piece. But every time I have won, it is only a battle; it is not part of the war. The frustration is, why are these obstacles in front of me?

If I am able to go through this, what do the other Americans have to go through that cannot speak as well as I can, that cannot understand or perceive things as well as me? I am just saying this Government needs to get onto the page of really working for the people. It needs to stop making new rules, new regulations, and start looking at some of the things that were made to protect people at the expense of other Americans and abolish those things, then start enforcing some of the ones that exist that are good, so that there are not loopholes.

That way when I tell my son, "Hey, it is important for you to follow, to believe, to work, to do all those things," he has a reason to say, "Yes, dad, I know." Right now, if he really could understand and could look at it, he would say, "Get out of here. You're a liar. You're crazy. You're stupid. Why would you believe in something like that?"

That is what I am here to speak about. This country is falling apart, and it is falling apart because we continue to allow other people to divide us. We continue to let other people live off the sweat of other people's backs. The only thing I have to offer to my children is the sweat off my back. Hopefully, they can take that and raise it to a higher level. If people are allowed to continue to live off the sweat of my back, then I am doomed to be a laborer, my child is doomed to be a laborer, and we never get out of the mire, the quagmire.

If I am given an opportunity, something that I am supposed to be guaranteed as an American citizen, the opportunity to do business, and the Government regulations are only there to protect and are safeties for other Americans and nothing else, do you know what happens if I fail? I will just get right back up and try again. If there is no opportunity, I have to give up. There is no hope; there is no being. That is what I want to say.

I have listened to everybody. My story, like I said, I could really be personal and say, "Oh, it was me, it affected me," but that is not the point. The point is, What do I leave to my grandchildren? What am I fighting for? Why did I go through this whole time-never being arrested, never breaking the law, never doing anything-always trying to go through the system? What did I go through this for, if the reward is not there at the end?

I just want to say to this panel that, yes, Government regulations inhibit many Americans from getting their foot in. In the cab market, if you go into any city most of the people who drive the cabs cannot speak English. If you cannot speak English, how can you go into the job market and get a job? How can you go somewhere and raise up?

You can drive, and that is the thing. You need to remain free long enough so that you can better your English, so that you can get a better education, so that you can bridge careers. That is what you find in the cab market. Yet, you find regulations there restricting people from being owners in that business. There is no justification for it.

Why does it have to cost me so much money to buy a car, insure it, and put it on the street? These are the types of regulations that exist. These are the things that frustrate me. These are the things that I see and I say, "The answer is simple. Just open opportunity for everybody."

Let no American have the advantage of holding somebody down so that they can go ahead. Let everybody exist and compete. The ones who fall, it is not the end of the world. They are not dead. They can always get back up and compete again, because the opportunity is there.

When you close off their opportunity, those people do not have a chance. Then it becomes the Government's responsibility to create a welfare state, to create a place to take care of people who do not have opportunities to take care of themselves.

I am going to close in a minute, but I want to say one thing. The first welfare system that I have seen in existence was not the welfare system that we have right now. It was the welfare system that was created for the American Indian. First, his right to live was taken away from him by the killing of the buffalo, his main source

of food. Then he was put on a reservation and he was told, "If you stay here, we will give you money." He disabled his whole heritage, his whole tribe, and all the generations that came after him, because he no longer could fend for himself.

In our current situation, I am looking at this. I am seeing what is going on. I look and I see the farmers are no longer farmers; they are corporations. Again, the food source has been taken away. I can never be free. I can never own my own property. I can never sit down and live and be a free American, because I cannot grow my own food. I have a property tax I have to pay. I have to now sell myself to somebody else to work for them in order to survive.

Is that the Government that we created? Is that what it was for? Please tell me because I need to know what to tell my children.

Thank you.

Chairman TALENT. Well, thank you, Mr. Jones. When you summarize, you summarize your testimony. That was wonderful.

Mr. Uqdah, and please take your time. Do not feel like you are under any constraints.

[Mr. Jones' statement may be found in the appendix.]

TESTIMONY OF TAALIB-DIN ABDUL UQDAH, CO-OWNER, CORNROWS AND COMPANY, WASHINGTON, DC

Mr. UQDAH. Mr. Chairman, it seems as though the last person that sat in this chair also gave a passionate speech, and I kind of feel like Clint now. I have to try to follow someone who has spoken from their heart, and has certainly moved me.

I, too, would like to take exception to the notion that my issue is local. The small business that I own I could not today go anywhere in the United States and open up another location. I am prohibited by every State law in this country from moving from my present location at 14th and Jefferson Street to anywhere else in the United States. That, in my mind, makes this a Federal issue, because I do not have the freedom to go anywhere else in this country but to Northwest Washington, DC.

I am the co-owner of a small business in Washington, 43 years old, a 1970 graduate of Eastern High School here, in the District. I have been self-employed for over 20 years. I am not an economist, have never been to college, and have no background in law, accounting, medicine, or politics.

I tell you these things about myself in order for you to get a clear picture as to my perspective on life as it relates to small business and my testimony before this committee today. It is not based on any theories of law, science, or economics.

I am affiliated with no wing of any particular political party, nor do I hold any memberships in any private clubs or secret organizations. I am a practicing Moslem. Islam is my religion. As such, I have a great deal of respect for commerce and trade.

My purpose here it two-fold: First, to discuss the problem of burdensome Federal and local regulation and how it affects the small business entrepreneur; and, second, what I perceive may be some of the solutions to those problems created in our recent present.

Just at the point that I felt we had our legislative battle won in the District of Columbia, the "regulatory monster" has now reared its ugly head, and once again I find myself fighting the very same

people who opposed us over 13 years ago-as before, losing both time and money to a Government entity that couldn't care less as to what burden it is placing on its businesses.

The last 48 hours have been difficult ones for me and my associate. For it is within this timeframe that I have learned that the process of promulgating regulation has nothing whatsoever to do with the passage of the actual law. When you live and do business in DC, this seems to be the rule and not the exception.

"DC" does not stand for the "District of Columbia," but "doors closed:" Doors closed to business, doors closed to free enterprise, doors closed to economic liberty. You only have the right to pursue a legitimate enterprise if the Government has legitimized the enterprise, and whether the law or regulation has any relevancy to the profession is irrelevant.

Our small business entrepreneurial problem here in America is that we have developed a false sense of capitalistic freedom. On the one hand, we claim to be capital of the free world, the harbingers of the free enterprise system, where the free flow of ideas and the ways and means to implement those notions are at a premium; when, in reality, we are a country of stringent rules and regulations and the crusher of dreams and aspirations.

There is nothing free about our capitalism, our economics, or our enterprise. It was the free flow of ideas and the opportunity to take risks to work on those ideas that put this country ahead, but today there is not a business or an invention that exists that would have been allowed to advance, grow, and flourish if present-day regulatory schemes were put in place back then.

There are many successful American businesses whose humble beginnings would today be recognized as illegal activity. Could you imagine great inventors and entrepreneurs being fined or arrested for practicing or operating a business without a license? You certainly cannot imagine it then. The question is, why are we doing it now? Why are we more determined now than ever to make it more and more difficult to identify, recognize, and support our American enterprise system?

Today, there is no free enterprise system, only enterprise. There is no freedom, and there is certainly no system-only chaos, confusion, frustration, bewilderment, and the infamous red tape. We cannot, on the one hand, claim to be economically free while, on the other, refuse to give our citizenry the opportunity and the right to exercise on that freedom.

Along with this freedom comes a sense of responsibility and trust. Every day what we say to our American citizenry is that we do not trust you. Granted, laws show our civility, they show our sense of order, and our respect for Government and leadership. Regulations governing those laws only say to our citizenry that "We cannot trust you to follow the law as we have written it."

Licensing schemes, our local and Federal Government's "cash cow," in many cases knowingly participates in a "closed shop" mentality of unionized and nonunion-type activity by shutting out unlicensed individuals, preventing the emergence of anything that resembles what the present licenseholders will claim to be "unfair competition," and only demonstrates the licenseholders' ability to be able pass a nondescript "standardized" test.

There is nothing within the license or regulatory scheme of any Federal or local jurisdiction which can claim licenses are more proficient at their craft than nonlicensees. The food at a licensed restaurant does not taste any better because it is licensed, and is certainly not any cleaner based on a licensing criteria.

Burdensome regulations are simply a means to justify the hiring of Government workers, bloating the bureaucracy, running up the deficit, setting up little Governments within the Government, cloaked as a board or a commission, which are made up of practitioners within the Government industry to keep out the undesirables-the unlicensed practitioners-perpetuating the establishment of training schools, which the Government licenses and regulates; then charges perpetual and escalating fees to an unsuspecting public who thinks their Government has their best interest at heart because their motto is, "We're doing it all for you-public health and safety."

Yes, my proposal would put people out of a job, but not out of work. Since when has there been a constitutional amendment guaranteeing any individual a job in Government, but will not give me the same guarantees to operate my own business without Government interference? Licensing and regulatory schemes have become a legitimized Government racket, disguised as small business entrepreneurship.

Mr. Chair, the District's lack of sophistication in the process of Government and its effects on the small businessmen is mind-boggling. It does not take a high school graduate to figure out that the quickest and easiest solution to these myriad of problems is deregulation now and forever.

The first thing I would recommend to this committee is to deregulate all trade and service industries, make our free enterprise system free again. For those who want licenses, they would still be available, but both the practitioner and the public would have choices.

The decision to get or not to get a license or to patronize or not patronize a licensed or unlicensed establishment would be left up to the individual, not the Government. Local and Federal officials need to have more respect for the intelligence of the American public, that they can decide whether they want a licensed or unlicensed mechanic.

Adoption of Clint Bolick's proposed Economic Civil Rights Act would be the first step in accomplishing this goal toward deregulation, mandating both Federal and local jurisdictions to release their stranglehold on small business enterprise in America.

It would further open up a free market economy, where companies like mine could take our businesses across the country assisting in welfare reform by providing training, jobs, products, factories, and much needed tax revenues to the local and Federal economy.

Further, I would set in place a mechanism for redefining what a small business is. Presently, most local and Federal jurisdictions consider a small business any business which grosses between $3 and $8 million a year. What local and Federal officials have done is to declassify the rest of us as "minuscule," nonconsequential, expendable, simply an afterthought. This is unacceptable.

Expansion and support of public and private entrepreneurial initiatives is a must. The incorporation of business practices and principles into the present school curriculum along with basic skills is imperative, with an emphasis on innovative projects which encourage creativity and thought, establishing public/private partnerships with emerging industries, and tracking students for those positions at an early age, grant tax incentives for any business that adopt an entire school district, a school or simply a classroom or a student.

Finally, I would urge this committee to include us, the small business entrepreneur in the process of Government. We have no lobbyists. There is no one in Government looking out for our interests. How can you possibly begin to understand my plight, when you have never talked to me or someone like me?

What I am saying to this Honorable Chair and this committee is simply this. Inviting us here to offer testimony that we have given today does not make me feel any better, nor am I disillusioned to think that this presentation makes me a part of some great legislative process, until I see some tangible results.

I seriously wonder at times do legislators truly understand our plight if you do not hear from us constantly and consistently as other lobbying or interest groups until it is too late? If I do not ask to represent myself, who will represent me?

We are turning to you looking for some help or, at the very least, some relief. I am drowning in a cesspool of Government regulation and mean spiritedness which even now I am still learning has nothing to do with me operating my establishment but only designed to place me and others like me in check. We need your help.

I have never begged or pleaded for anything in my life, but I am doing it now. I am asking that you please get the District Government off my back. I cannot move forward businessly and continue to fight them at the same time. It is a losing battle for us and for them. America's small business community will never prosper again. So long as our Government is holding us down with needless regulation or threats of intimidation, both of us will lose. We cannot win. We need your help.

I thank you for your time and your consideration. I will respectfully address any questions or comments that this committee may have. Thank you.

Chairman TALENT. Thank you, sir.

Mr. Pearson?

[Mr. Uqdah's statement may be found in the appendix.]

TESTIMONY OF ART PEARSON, SOLE-PROPRIETOR, ART PEARSON ELECTRICAL AND GENERAL CONTRACTING COMPANY, TACOMA, WASHINGTON

Mr. PEARSON. I am going to read my testimony also, but before I start the reading portion, there was a person who asked of the first panel about the minority involvement in the apprenticeship training program. That is part of my problem with the Davis-Bacon Act. The Davis-Bacon Act is a real broad thing, so I am going to try to answer that question.

Specifically in my area, I have been in this business and have been licensed, since this past June third, for 25 years. I think I

know my business. In other words, I know my business and I study my business in every aspect. I also was involved with the electrical apprenticeship training program.

Over the years, I was confused by a lot of things as they took place. I did not understand, until I was able to look back and put some of these things together. The apprenticeship training in my area, when the contract requirement called for minority trainees, the union goes out and recruits these trainees and puts them into, women and minorities into, apprenticeship training programs.

My real problem is there is no success ratio. Now, I am talking about as far back as 1970. As the contract requirement is filled by the apprentices from contract to contract and from year to year, it seems that it is replaced by other apprentices, and no success ratio. As I read my testimony, I am going to give you some counts in my area of black workers versus total construction workers in my area.

I guess I should have started with this sentence first. But anyway, my name is Art Pearson. I am an electrical and general contractor out of Tacoma, Washington. My business involves mostly heavy highway street lighting and traffic signal. All of this comes under the Davis-Bacon Act.

Art Pearson Electrical and General Contracting Company is a union shop that employs more than a dozen employees. Because we are a union shop, and unions in Washington State are mainly white, nearly all of my employees are white. Of Washington State's 109,000 construction workers, only 2,000 are black.

I am concerned about the rising tide of joblessness and violence in the black community. As an African-American, I believe I am obligated to improve the quality of life in my community. The Davis-Bacon Act is standing in my way.

I would also like to add to that particular paragraph that because of my past background and the longevity of learning my trade, I think I am sort of an authority to speak out on this. You know, I have heard over the years a number of people who rulemakers and lawmakers call on to make these little speeches. However, these people are not from the construction industry.

I feel like with almost 30 years behind me in this particular business-actually, I started in construction when I was 11 years old-I feel that that makes me somewhat of maybe not an expert, but sort of an authority on what I am about to tell you.

As many of you know, the Davis-Bacon was passed in 1931 at the urging of unions. With the Davis-Bacon, Congress neutralized black labor competition by requiring that prevailing wage rates be paid on all Federal projects valued at more than $2,000-in essence, all Federal-financed construction projects.

In practice, "prevailing wage" rates mean union wages, effectively counting out any laborers who could not command union-scale wages. Well-capitalized companies could afford union wages, but their unions usually kept blacks out. Nonunionized businesses-which were often less well-capitalized-could not afford to pay these prohibitive rates on labor.

Today, construction unions still try to keep the black labor pool out, and many black-owned firms are still small and nonunion. To seek Davis-Bacon contracts, minority firms must not only pay inflated wages and adopt inefficient work practices, but must expose

themselves to huge compliance costs and threats of litigation and union harassment.

Few minority-owned firms win Davis-Bacon contracts, and many others give up trying. The widening net of Federal Government means that, in practice, few contracts available to my business, for example, are outside the power of this act.

Davis-Bacon remains a principal reason why blacks are unemployed at twice the rate as whites in the construction trade. With less than 13 percent of the American people involved in organized labor, it is reasonable to ask why the Federal Government is spending ⅛th of every project dollar limiting the access of the other 87 percent of the work force. Union activity is protected in an array of policies and agencies. There is no reason why the Federal Government should also be the union steward.

If the Davis-Bacon Act were removed today, I, and other contractors like me, would be able to hire more people for the same or fewer tax dollars, complete more projects for the same tax dollars, and complete them more quickly.

Davis-Bacon is a waste of taxpayers' funds. The act accounts for 20 percent of the $232 billion construction business nationally. Repealing the act would save the Federal Government approximately $1 billion on construction costs and $100 million in administrative costs each year. Costs of compliance with the act for the construction industry totals nearly $190 million a year. The act's repeal would also result in the creation of an estimated 31,000 new construction jobs, most of which would go to members of minority groups.

Stated as simply as possible, Davis-Bacon means Federal Government contractors should hire fewer workers but pay them exorbitant wages, work on fewer construction projects, and to complete them more slowly.

The amount of paperwork that a contractor is required to fill out as a result of the regulations governing Davis-Bacon also prevents small minority-owned firms from seeking Davis-Bacon projects. Many small firms do not have available personnel with the necessary expertise to complete myriad forms and reports the regulations require. This provides a great advantage to the large and usually highly unionized firm who has more resources to devote to complying with the act's requirements.

At Pearson Electric we spend hour after useless hour filling out certified payroll reports, monthly utilization reports, labor and industries affidavit of wages paid, equal employment opportunity reports, reports on subcontractors, reports on approval of material sources, certificate of material origin reports, and so on. I mean, it just sort of goes on and on.

The paperwork requirements are so extensive, in fact, that I thought at one time of getting out of the construction industry and processing this paperwork for other small companies.

Chairman TALENT. Mr. Pearson, I tell you, maybe what you could do, because this part where you are talking about your own experience is especially useful to the subcommittee. Maybe you could complete that part on page four and the top of page five of your statement and then summarize so that Ms. Velázquez can ask you questions relating to that.

Mr. PEARSON. Yes, I would welcome that.

Chairman TALENT. That would be great, yes.

Mr. PEARSON. Most of the work I do as an electrical contractor involves traffic signals and street lighting, as I stated before. Now, one of the problems, first of all, 75 to 80 percent of the traffic signaling and the street lighting that I do on highway and residential streets, 75 to 80 percent of that work is labor work. This involves removing grass, digging trenches, removing asphalt, pouring concrete, making wooden forms, installing conduit, and replacing all of the same.

There is a lot of labor work involved in what I do, to the tune of, again, 80 percent. However, because of the union job classification and also the Washington State Department of Labor's industry classification, if the job even remotely involves electrical work, it must be performed by an electrician who is paid $27 an hour. Again, that is his base and fringes, but my cost on that particular electrician is actually $42 an hour.

This is the equivalent of requiring everyone in a hospital room from the scrub nurse and orderly to the doctor that is performing the surgery to be paid at the same rate as a trained physician.

These requirements are a waste of taxpayers' money, and they are just another way of keeping poor people from these higher paying jobs. There is no valid justification for paying a skilled electrician $27 an hour for digging a ditch, when you can hire three people who are willing to dig the same ditch for an equal total wage.

I understand we are kind of pushed for time, but I want to say this.

Chairman TALENT. Please make any points you think relevant, yes.

Mr. PEARSON. Yes. Just for a minute, let us imagine we applied this foolish requirement to the offices here on Capitol Hill. I am sure each of you has a hardworking staff member who answers the phone, attended legislative meetings on your behalf, assist you in speech writing, and may occasionally even drive you to an event. Now apply what Davis-Bacon does to my business to your business.

Imagine the headaches you would get trying to classify, under penalty of law for mistakes, that one hardworking staff member's time spent between the clerical wages earned for the hours answering telephones versus the staff wages earned while attending legislative meetings versus the speech writing wages earned to create your next major address versus the drivers wages earned while driving you to some event. It is enough to drive you crazy or out of business or even both.

The real point I am making with that-not only is it my business, the electrical business, but plumbers, carpenters, cement finishers, they all have this certain classification. It is an all and overlapping type of thing. As I stated earlier, 75 to 80 percent of the type of work that I do is labor work.

Because of Davis-Bacon even right now at this hour, 10:30 Pacific time, I am probably being monitored already as to what my people are doing out on the job sites by the State inspectors, the local inspectors, monitoring. I surmise they are doing the monitor-

ing because they, too, belong to some sort of unions, and they all sort of hang together.

Again, I am making this point, because over the years my observation has been that Davis-Bacon has created a lot of problems. In my particular area, if you are black, to do highway work, we are picked right out. We tend to be in that area resented.

I had a group of black employees on the street and a white electrician who were pulling about a mile of cable. An inspector that was on the way home observed this, because it is unusual to see that many black people along side of the road. Anyway, the bottom line, I got a ticket: No apprenticeship cards and whatever else the ticket consisted of.

The point I am making again with it is that Davis-Bacon is a racist law; not only is it supporting unions but State, local, and Federal officials. It is sort of out of bounds, but joins in with the unions to create additional problems for companies such as mine. Anyway, I am going to cut it short without reading it all, because I know you have it.

At one point, back during the late 70's or early 80's, I was trying to do something about the unemployment in the black community. I hired about a dozen black kids, two of them happened to be my nephews, to gut out a building at the VA Hospital, removing sheetrock, wallboard, and that type of thing. Well, before it was done with, I was faced with a big lawsuit from the union that said I had an agreement with them.

Going into this, they told me that I could not do it. I said, "Well, I am going to do it anyway. If you want to put them in the union, I will be sure that they will pay their dues." Here is another example of the harassment that I have been getting over the years as a result of the Davis-Bacon Act.

Now, I am almost 100 percent sure that I would not have gotten that type of reaction from the union if we had been doing some house remodeling, but it was a prevailing wage paid job; it is a higher paid job. Just to add to that, when I got into a prevailing wage job was back during the early seventies doing HUD work-I believe it was about 1972 or 1973-and I have been doing it ever since.

Ever since, I have been fought every way I turn by the people within the construction division. Some of the high officials in the city of Tacoma, they call me up and they say, "We've got this remodeling job for you to do. We've got this porch for you to do. We've got this painting for you to do."

I was out there doing street lighting, and then I also had several people to say, "Why are you out there doing this asphalt? Don't you know that belongs to XYZ Asphalt Paving Company in this town? Why are you doing concrete pavement? Don't you know it belongs to So-and-So?"

I was young and had a lot of energy and, perhaps, maybe naive, and I sort of took that as a joke, what they were telling me. I really didn't know how serious the situation was in that particular area at the time, again, until I sort of lived through this and sort of looked back and reconstructed everything. Those people were highly serious when they told me that I wasn't supposed to be doing asphalt or concrete pavement in that town.

The equipment that I had bought for paving streets, the chief of the Construction Division of the city of Tacoma told me sort of casual like, "Well, you know that most of the asphalt paving that you do will just be considered as temporary."

That is where part of my name came from-Art Pearson Electrical and General Contracting. I was doing just as much general contracting work as I was doing specialized electrical work. As of late, my field mainly has been in the electrical classification.

But again, the real point that I want to make out of this entire speech is if it wasn't for the Davis-Bacon, I could have provided better opportunity for some of my unemployed family members, the kids in my neighborhood, in the inner-city-in our case it is all in Seattle, the Central area, or the Hilltops of Tacoma.

I have had a number of kids over the years to come to me looking for jobs, and I had to turn them away and tell them to go to the union. I reached out to help them by sponsoring basketball, softball teams, just to try to pull them together.

Chairman TALENT. Let me just ask you to maybe make another point and then close, because I want to be certain we have time for questions.

Mr. PEARSON. Most of my young Boys' Club basketball team was around the age of 10 to 12 years old. I do not know for sure how many of them are still living, most of them are dead. They played on my basketball team, and I got them uniforms through the Boys' Club, but I could not give them jobs. I was locked into the system of the union.

I could have given them a job if I could have afforded to pay them prevailing wage rates, on today's scale for laborers, of about $22 in my area. There was just no way. I have done that to a point. Several of the people who I have brought through my company and trained and paid were taken from me by other bigger companies, but I cannot continue to do this. That is the problem.

I can help in my small company in a little, tiny way if the Davis-Bacon Act does not prevent me from bringing in not only inner-city kids, but people who want to work, paying them on an intern level until they work their way up to the scale.

Thank you for listening to me.

[Mr. Pearson's statement may be found in the appendix.]

Chairman TALENT. I appreciate very much your testimony.

Ms. Velázquez?

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. I welcome your testimony. It really shed some light onto the matter under discussion here. I am very sympathetic to the obstacles that you seem to have been facing in your own experience. It is the same kind of problem that many of my constituents are facing in the district that I represent, one of the poorest districts in the Nation.

I work very closely with the small business community in my district, and they are facing a lot of obstacles. One of the main issues that they face is redlining, is access to capital. I am also concerned, however, that rather than looking to the specific situations or regulations and the impact that it has on small business, that your testimony might be interpreted as an argument against all kinds of protections in terms of our community. That is my concern.

Mr. Jones, you related to us your experience when you went to the bank to apply for a loan, and you were required to have 18 months as a track record.

Mr. JONES. Correct.

Ms. VELÁZQUEZ. Was that a bank policy, or was that related to the Davis-Bacon Act?

Mr. JONES. It has nothing to do with Davis-Bacon, it is a bank policy, unless their paperwork is somehow entwined in that.

Ms. VELÁZQUEZ. What about your experience with the insurance company, when you went to apply for the insurance and it was required that you have a $50,000 bond, was that, again, a policy of the insurance company or related to a Federal regulation?

Mr. JONES. Well, the truth of the matter is the Public Utilities Commission regulates the taxicab industry, and they tell me that I should be able to obtain insurance at a first dollar payout, but the practice is that I cannot obtain insurance at the first dollar payout. If I want to go into business-no matter what I say to the Public Utilities Commission, they just seem to turn their head to the reality of the fact that I have to put money down to justify a deductible.

Ms. VELÁZQUEZ. I understand that.

Mr. JONES. What I'm trying to say is there are two kinds of crimes that happens, there is one that is omitted and there is one that is by omission. Meaning that, you can turn your head knowing it is wrong because you are going to gain from it. Somehow in the system that we live in, those crimes are being allowed. If the Government is allowing it at the expense of the citizen, then it is wrong.

If in my State I am required to have auto insurance, and the Government sets up regulations for the insurance company to insure me, then the insurance company then finds a way not to insure me unless I do something specific, then it is the Government's responsibility to either take me out from underneath the control of that insurance company, or force that insurance company to comply with the rules.

Ms. VELÁZQUEZ. So, you see a role for the Government to interfere?

Mr. JONES. Yes.

Ms. VELÁZQUEZ. OK.

Mr. UQDAH. Yes. It is an antitrade matter.

Ms. VELÁZQUEZ. Yes. We all agree on that.

Mr. JONES. That is what I am saying, is there are some things that are good and beneficial for the safety and welfare of people. We need to define what those things are and enforce them. Then, we need to look at all the other things that are not keeping America free, and get those out of there.

Ms. VELÁZQUEZ. Thank you.

Mr. Pearson, how do you feel about apprenticeship programs?

Mr. PEARSON. Well, the apprenticeship program is used as a tool to keep black people out, another form of, "You're not qualified."

Ms. VELÁZQUEZ. How do say that it serves to keep minorities out?

Mr. PEARSON. Well, first of all, there is a long waiting list. Again, I was on the Apprenticeship Training Committee. On paper it is a

good thing. Now, I also happen to know that it is not only a tool to keep minorities out by the length of time it takes to get them in there, but by the time you apply-which is, I believe, once a year around March or April-if you miss that date, you have to wait until next year. Then also you have a long waiting list, then the exam, and the interview comes up. In most cases they get discouraged-not only minorities, but I also know some nonminorities.

Ms. VELÁZQUEZ. Let me ask you, What is your recommendation to this committee in terms of how can we effectively provide the necessary skills for blacks and Latinos in this country that will allow them to obtain well-paying jobs?

Mr. PEARSON. By getting them exposed, first of all, as somebody mentioned earlier, in high school. I think they call them "Career Conference Day" or something. Kids have to be exposed before they get out of high school. I really did not know what I wanted to be when I grew up when I graduated from high school. I mean, all I knew was that I wanted to get a job making the most money that you could make.

My recommendation, to answer you more directly, would be, first, the word is "exposure," and not only in construction. I may possibly have been interested in being a doctor or a lawyer or a scientist, but I had no idea what that was all about.

As I talk to kids, you cannot imagine how fascinated they are when I say to them, "Are you interested in being a doctor? Well, why don't you go up to the University of Washington and just sit in the classroom?" Again, this is that side of it.

Now, in construction, the apprenticeship training-we have gone there for 20 years, the experts getting apprenticeship training when it comes to Mexican-Americans or African-Americans and others, women. The program administrator or the advisers were always the union. The requirement came from the Federal, State, and local government. In other words, the affirmative action portion.

As I have seen over the last 20 years, this has been manipulated by the union to keep everything in house. Now, the U.S. Department of Transportation, the Washington State Department of Transportation provides for a number of hours of training in their particular bid items. I have seen as many as 60,000 hours on one project.

Well, my complaint has been the contractor that has got the collective bargaining agreement that bids these jobs, first, I notice they only bid $1. They are always telling me black kids are too much bother.

Now, I come back and I say, "Why are you just bidding a dollar?"

"It is a requirement."

"Why don't you bid $5, so you can erase some of that bother?" Now, the intent of the hours that were in these contracts was to reach out into community that this work is impacting.

Ms. VELÁZQUEZ. Mr. Chairman, I am just searching for some statistics that prove otherwise. Maybe later I will be able to report back to this committee. I was reading a report that stated that it was because of the Davis-Bacon Act and because of the court cases that brought about openings in terms of providing blacks opportu-

nities through apprenticeship programs, providing them the skill that would enable them to be part of the construction industry.

I do disagree with you, Mr. Pearson.

Mr. PEARSON. Well now, that is the intent, but what is actually happening, and you can see it by most stat sheets, especially in Washington State. There is no success ratio. I was subpoenaed in 1970-actually, the subpoena came in 1969-to testify on behalf of the local union. The U.S. Government was suing the unions about their recruiting of blacks.

Now, this has been 20 years ago. Judge William Lindberg's decision in June 1970 says that each union will put in 25 apprenticeship trainees each year with no time limit. Any of these people who do not make it, the requirement still remains, and you have to replace them in kind. This is Judge William Lindberg, which is on the record.

Now, if this court decision had been abided by, we would have a lot more than just a handful of electricians and electrical contractors in the State of Washington right now. What I am saying is the Davis-Bacon and the union-the apprenticeship training that you have mentioned, it sounds good from those people who can speak a lot better than I. They relay the message, it sounds pretty, it is nice, and then you wonder why people like me are challenging it; because I have lived through this.

I may not be able to make the nice speeches to sell the committee all of the things people such as the U.S. Department of Labor, AFL–CIO, and those guys that have the real good speakers can, but I am telling you it is not working the way it was working.

The only way it is going to be able to work is give guys like me room enough to bring in a few minorities into my shop and train them on an interim level without having to start them out at $22 an hour. Now, at least give us a chance to do that. I am saying if not suspend the Davis-Bacon Act, give it a recess for a while.

Ms. VELÁZQUEZ. I would say that I just want to see that wages in this country are not lowered, rather that we create the training programs that are necessary to enable people with the skills that they need in order to join the construction industry.

Thank you, Mr. Chairman.

Chairman TALENT. I thank the lady for her questions.

Mr. Jones, your testimony was very eloquent. I thought when you were testifying about how Abe Lincoln quoted the passage from the "Bible" that "A house divided against itself cannot stand."

My parents were both very poor when they were raised, and there were a lot of differences among Americans when they were raised, but I have really this terrible sense that the differences then-differences between the haves and have-nots then-were economic. However, people basically shared the same ambitions and hopes and ideals and felt they had a reasonable shot at achieving them.

Now, although we have made progress on so many fronts with the elimination at least of outright racial discrimination, for example, it is the sense of despair that people feel that is the worse thing. I mean, that is a lot worse than poverty. You touched on that much more eloquently than I have ever heard it, and I really appreciated it.

Mr. Uqdah mentioned that we need to talk to people, and I agree. That is one of the reasons I wanted to hold this hearing. Let me just ask you all, since you are talking from your experiences, how widespread is this problem? I have read the stats about the taxicab business, and I know about in cosmetology.

Mr. Uqdah, I am from Missouri, and you know that our law is particularly "comprehensive," to use a neutral term.

How widespread is the problem? I mean, how many people are chaffing under this right now?

Mr. UQDAH. There is no way to measure it, Mr. Chairman, simply because barriers to entry-level entrepreneurship cannot be measured, because you never know who has the desire to go into business but is frustrated by the process.

For example, one of the first businesses I owned was a grocery store, a 24-hour market. In order for me to own this store, I needed an occupancy permit, a business license, a patent medicine license, a cigarette license. If I chose to sell beer and wine, I had to have an alcoholic beverage control license. I had inspectors from Weights and Measures coming in inspecting my scales. I had people coming in from the Health Department to inspect the cleanliness of my place.

Now, some of these things I agree with. But what you have to understand about the licensing process is these licenses are perpetual. It is not like I pay for a cigarette license, and then it just rides along with the operation of the business

The same thing with taxicabs: I talked to a cab driver this morning. He pays $75 every year for a license. When I asked him what he got for his license, he could not tell me, just the license with his picture on it.

You have had work done in your home. Did it take a licensed plumber to put on a toilet seat in your bathroom? I do not think so, but that is what is required across this country. Pretty soon, it is going to get to a situation where if you want to change a light bulb in your own house, you are going to have to call a licensed electrician. That is the part of the process that is unfair.

Chairman TALENT. I fought for years in the Missouri Legislature to get lay midwives licensed because I know so many people who would have preferred to use them. I will not go into this, especially since we have a vote coming up, but I am very familiar with what you are talking about. It is a real problem.

Maybe you can comment on this, and again I am sensitive to the concerns that my distinguished friend, Ms. Velázquez, raised about Federal intrusion into an area. I will finish my comment briefly, and then please.

It strikes me there has to be some room for a careful Federal role in this, either as part of our responsibility to try to remove burdens on commerce, which this clearly is, or to enforce the 14th Amendment's guarantee that everybody should have a fair opportunity.

I mean, I think the point you made-you both made, and Mr. Pearson as well-as eloquently as I have ever heard it, is that the pursuit of happiness, protected by the Declaration of Independence, is really the right, free from arbitrary intrusion by anybody, to build your own business or have your own way of life and participate in the economic and community life of the country.

I just have to believe that there is some way. We have tried to clear the way federally from overt racial discrimination. We have the antitrust laws, and these laws seem to me to be violations of the antitrust laws. They are simply allowed because the State sanctions them. Maybe you would like to make a comment on that, and then we will probably need to wrap it up, because we are going to have to go vote. Please.

Mr. JONES. I would like to respond. You are asking for what proportion or what percentage would justify what we are going through?

Chairman TALENT. Yes.

Mr. JONES. I would like to suggest that since Representative Velázquez likes statistics, that she use and you use statistics on crime, statistics on poverty, statistics on more prisons, more police officers. Recognize the fact that if economic opportunity was opened up to every American citizen we would need none of that.

We have had a war on poverty, a war on drugs, a war on crime, and everything has increased. The population of America is getting poorer and poorer. All of this is by Government regulation. By Government wars. The real war cannot do anything unless there is a cause and effect. I cannot put more cabs on the street in the Denver market and help my drivers, unless I lower the payoff.

To me it is very simple, it is give us the right, the economic liberty that we supposedly have been guaranteed. Let us fail or succeed on our own merit. Open up the door and get out of our way, and let us live. I will guarantee you that most of the problems-the divorce rate will go down, drugs on the street as far as crimes with gang members will go down.

Just imagine, in our system we have a system called "qualifications:" Are you qualified? Qualifications has never been anything but a doorway to disqualify people from coming in. In my life and the way I live and my education, it has always been: Are you capable? If a man is capable, it does not matter what school he went to; it is just that he can do the job.

I have had college professors that were qualified, pardon my expression, that had buggers hanging out of their nose on spittle on the side of their mouth. They put me to sleep, and I didn't learn a darned thing in their class.

If we live on this system of qualifications and we start using this divisiveness of, "Well, I'm black, you're white, I'm Mexican, you're black," and we keep fighting against each other, we will never have a solution. I guarantee you if we take the profit out of the racism and the sexism in this country, and we allow our economic opportunity, you will see this country fulfill its goal and its dream and its ideals about being free.

We go around this world saying that we believe in freedom, and yet we have sponsored every major dictator that has existed since 1940. We say we want peace, and yet we are the biggest arms runners in the world.

To me it is not a point about knowing what the solution is, what the point is, is making a commitment that we are going to live up to the goals and ideals that we really believe in, that we say we believe in, and then doing what is necessary. That is, opening up

economic liberty, allowing people to have property without the threat of the IRS taking it away from them.

Let us enforce our laws equally. We let corporations come into a neighborhood, as Ms. Velázquez was saying, that promise us 85 jobs or 150 jobs. We give them tax breaks, tax incentives, and we pay them money to set up. Then in 2 years we let them downsize and fire all of the people they hired. What was the point that we let them enrich themselves?

We have a law, a word says "bankruptcy." Bankruptcy to me in the dictionary in all my studies has said "to be without funds." Yet, we allow people with $10 million or a $1 billion to say, "I am bankrupt," and not pay, live up to their responsibilities.

If you want to look at statistics, we can say, "Why more prisons? Why not more opportunity? Why more policemen?" Crimes are committed by people who do not have and who are trying to take away, because they have no other way to get it or they do not feel they have any other way to get it. It is caused by ignorance.

We want to educate our children to be economic in nature long before they leave high school. Let them start practicing where they get paid $10 a week, to take that money and see if in 2 weeks they can make it into $20. I mean, we need to teach our kids to learn how to survive and make money and have opportunity. Then, after they are able to feed themselves and feed their families, then they can go back to school and become whatever they want.

Chairman TALENT. We are all at the mercy of the House's schedule. Ms. Velázquez and I have to go vote, so I am going to have to let that be the end of it. I am grateful for you all being here.

Without objection, we will hold the record of the hearing open for 2 weeks, so that I can address some follow-up written questions to Mr. Bolick, and any other Member can do that as well-and also so that you can find those statistic reports that you wanted to submit for the record.

I really would like to continue this, but we are going to have to vote. I will declare the hearing adjourned. Thank you again for being here and for your compelling testimony.

Mr. JONES. Thank you so much. I am sorry for talking so much.

Chairman TALENT. No, you did not. Again, we are all at the mercy of the House's schedule here.

[Whereupon, at 2:05 p.m., the subcommittee adjourned, subject to the call of the chair.]

APPENDIX

JAMES TALENT, MISSOURI
CHAIRMAN

NYDIA VELÁZQUEZ, NEW YORK
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
Subcommittee on Regulation and Paperwork
B-363 Rayburn House Office Building
Washington, DC 20515

OPENING STATEMENT OF CHAIRMAN JAMES M. TALENT

COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATION AND PAPERWORK

"REGULATORY BARRIERS TO MINORITY ENTREPRENEURSHIP"

June 7, 1995

Good morning ladies and gentlemen. I want to begin this morning by thanking each of our witnesses who have agreed to appear before the subcommittee today, especially those who have travelled great distances in order to be with us. It is also a great pleasure to have Congressman Flake, a member of the Committee, and former HUD Secretary Jack Kemp, a former member of this Committee, with us today.

This morning the Subcommittee on Regulation and Paperwork will hold the first in a series of hearings on the regulatory burdens of particular concern to minority entrepreneurs. I hope that this first hearing will provide members of this subcommittee with an overview of the federal, state and local regulatory issues of particular concern to minority small businesses.

The toll government regulations exact from the American economy every year is well known. Excessive regulations kill jobs and cost the economy an estimated $500 billion every year--more than $5,000 for the average American family. These regulatory costs are borne by every business and every family in this country, but especially those on the bottom rungs of the economic ladder. There is a great deal of evidence that excessive regulation and arbitrary barriers to business creation, on top of other impediments that already face many minority communities, have a disproportionate impact on minority entrepreneurship.

Clearly, some government policies have been designed to help minorities achieve access to opportunity. For example, it took the power of the federal government to end segregation in the United States and to end state-sanctioned discrimination. The importance of these achievements simply cannot be underestimated. But an increasing number of minority entrepreneurs believe excessive regulations prevent them from establishing businesses, hiring employees and producing goods and services needed by our society.

The purpose of this hearing is to discover what government regulations interfere with creative entrepreneurship. We will explore the concept of "economic liberty," the inherently American ideal that every American from every neighborhood and from every background has the right to pursue a profession of his or her choice free from arbitrary government intrusion. In doing so, we will try to determine whether specific regulatory policies place the heaviest burden on our nation's minority entrepreneurs, many of whom struggle to join the economic mainstream by starting out at the bottom of the economic ladder.

By raising these questions, I hope that our witnesses today can help the subcommittee understand the extent of the problem and where the bulk of it lies: at the federal level, the state and local level, or some combination of all three. And, after we conclude, I hope we will leave this discussion with a sense of what can be done to ensure that every American's right to pursue his or her dream is not abridged by arbitrary government policies.

Again, I'd like to thank the witnesses who are with us today. At this point, I'd like to recognize the ranking member of the subcommittee, Ms. Velazquez, for an opening statement.

ERADICATING BARRIERS TO ECONOMIC OPPORTUNITY: A CIVIL RIGHTS IMPERATIVE

Testimony of Clint Bolick
Litigation Director
Institute for Justice

Before the
House Small Business Committee
Subcommittee on Regulation and Paperwork
June 7, 1995

Mr. Chairman and members of the Subcommittee, good morning and thank you for inviting me to present testimony. My name is Clint Bolick, and I am vice president and litigation director at the Institute for Justice. I am privileged to appear with my distinguished friend, Jack Kemp, and with three heroes in the battle for economic liberty, who my colleagues and I have had the honor to represent in the courtroom: Taalib-din Uqdah, Leroy Jones, and Art Pearson.

I am here to ask you to make good on one of the most fundamental, but forgotten, civil rights: economic liberty, the right to earn an honest living in a chosen business or profession, free from arbitrary or excessive government regulation.

One hundred and thirteen years ago, Congress voted to protect economic liberty as among the "privileges or immunities" of citizenship guaranteed by the Fourteenth Amendment.[1] This provision was essential to safeguard the rights of recently emancipated slaves against oppressive southern state governments. Following the Civil War, many blacks used the skills they had developed as slaves to open their own businesses or to compete in the labor market. But the southern governments, determined to protect a cheap and servile labor supply, enacted "black codes" designed to thwart freedom of contract, private property rights, and the right to pursue a business or occupation.

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[1] For a more detailed discussion of the historical background and case law relating to economic liberty, see Clint Bolick, Unfinished Business: *A Civil Rights Strategy for America's Third Century* (San Francisco: Pacific Research Institute, 1990), pp. 47-91.

In response, Congress passed the Civil Rights Act of 1866, expressly protecting these economic liberties. But President Andrew Johnson asserted that the law was unconstitutional, prompting Congress to make it part of the 14th Amendment. Although the amendment's due process and equal protection guarantees are much more famous today, the "privileges or immunities" guarantee, which was meant to encompass economic liberty, is listed first and foremost among the three.

But the protection was short-lived. A year following the amendment's ratification, the U.S. Supreme Court ruled by a 5-4 vote in the *Slaughter-House Cases*[2] that the privileges or immunities clause did not protect economic liberty against abridgement by state governments. In the ensuing many years, although the equal protection and due process clauses have been invoked repeatedly to strike down state laws that violate individual rights, the privileges or immunities clause has never once been used to invalidate a state law, no matter how oppressive. This is judicial activism of the worst sort: draining a constitutional guarantee of its meaning.

As a result, among the basic rights we cherish as Americans, economic liberty receives the least protection in the courts. Hence today the perverse anomaly that the "right" to receive a welfare check receives greater judicial protection than the right to earn an honest living.

The consequences of this judicial abdication are devastating, particularly for people outside the economic mainstream. Oppressive regulations proliferate at every level of government, blocking entry into businesses and occupations that in a free market would provide plentiful opportunities for people with few skills or little capital. In a nation doctrinally committed to economic liberty, this is a travesty.

At the Institute for Justice, we are committed to restoring economic liberty. Our principal means are litigation and the court of public opinion. Our strategy is to develop favorable building-block precedents and public support until finally *Slaughter-House* is overturned and meaning is restored to the privileges or immunities clause and the basic right of economic liberty.

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[2] 83 U.S. 36 (1873).

But another, complementary route is possible. Congress has the power to enforce the 14th amendment through appropriate legislation. It should use this power to enact an Economic Liberty Act. The provisions are simple.[3] Any federal or state law that restrains entry into a business or occupation must be narrowly tailored to a legitimate public health, safety, or public welfare objective. Any person aggrieved by arbitrary barriers to entry could challenge them in court and have them removed. The practical effect of this law would be to vindicate the right of all Americans to earn an honest living while preserving legitimate governmental objectives.

In the appendix to this testimony, I present synopses of five case studies illustrating the pernicious effects of barriers to entry into businesses and occupations. The individuals whose stories I recount, including Taalib-din Uqdah, Leroy Jones, and Art Pearson, illustrate how the bottom rungs of the economic ladder are being cut off by oppressive regulations imposed by overzealous and often self-interested government officials.

Their examples underscore as well the true struggle for civil rights in the 1990s. These people do not want minority set-asides, or welfare, or any other sort of government handout. All they want is an opportunity to earn an honest living, to support themselves and their families, and to provide jobs to others. In other words, the basic economic liberty that is every American's birthright -- every American's *civil* right.

Mr. Chairman, these individuals can tell you far more eloquently than I about the barriers they have encountered on the road to the American Dream -- barriers no American should be forced to endure. Unfortunately their stories are all too typical, for the rules of the game are often rigged in favor of economic insiders against those who seek to honestly compete.[4]

We have a duty to provide basic and equal opportunities to people who seek to become productive members of society. I urge this subcommittee to take steps to make good on the guarantee of opportunity on which our nation's moral claim is staked.

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[3] The text of model economic liberty legislation at the state level is attached to this testimony.

[4] See Walter Williams, *The State Against Blacks* (New York: McGraw-Hill, 1982).

Appendix

CHALLENGING BARRIERS TO OPPORTUNITY: FIVE CASE STUDIES

Bootstraps Capitalism

The quest to restore economic liberty started literally at the ground level, with streetcorner shoeshine stands. Ego Brown had toiled for years as a government bureaucrat, and yearned to start his own business. He discovered a lucrative niche in the thousands of scuffed shoes pounding the streets of Washington, DC. Brown set up a streetcorner shoeshine stand and soon his business was thriving. So much that he began expanding, by leasing stands to enterprising homeless people for whom shining shoes was a second chance at life.

Unfortunately, the District of Columbia government shut down Brown's stands, citing a 1905 Jim Crow–era law forbidding shoeshine stands on public streets. Other businesses, such as food vendors, were allowed to operate, but shoeshine stands were expressly prohibited.

Brown went to federal district court, arguing that the ban violated the 14th Amendment's guarantee of equal protection of law. The legal standard in such circumstances is whether the law has any "rational basis" -- a standard under which virtually all economic regulations are upheld. But Brown won the first federal court decision in 50 years striking down a barrier to entry. The court "had no difficulty finding that bootblack prohibition fails to pass the rational basis test," declaring that "we would have to `strain our imagination' . . . to justify prohibiting bootblacks from the use of public space while permitting access to virtually every other type of vendor."

The decision in *Brown v. Barry*,[5] which the city did not appeal, provided the first building block in the jurisprudence of economic liberty. Brown's case received favorable and widespread media coverage. ABC–TV made Brown its "Person of the Week," with anchor Peter Jennings declaring, "He's made us all a little bit freer."

Revival of the Jitneys

Like Ego Brown, Houston entrepreneur discovered an untapped market. A cab driver, Santos discerned a need for a third transportation alternative beyond expensive taxicabs and highly subsidized public buses. He discovered the solution in Mexico City: the "pesero," or in English, the "jitney."

Jitneys are a transportation mainstay in large cities around the globe. They run fixed routes and charge a flat fee, like buses. But they pick up and discharge passengers anywhere

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[5] *Brown v. Barry*, 710 F. Supp. 352 (D.D.C. 1989).

along the route, like taxis. They are smaller and more efficient than buses and less-expensive than taxis. They also are ideally suited to low-capital entrepreneurship.

Santos began using his cab during off-duty hours as a jitney, operating in low-income Houston neighborhoods. The business was successful, quickly attracting other jitney operators. But the city quickly shut the industry down, invoking its "Anti-Jitney Law of 1924."

In the 1920s, jitneys were the main source of competition to subsidized streetcars. The streetcar companies lobbied in city halls across the country, all but exterminating jitneys. Seventy years later the streetcars are nearly all gone, but the anti-jitney laws remain. Today they are supported by the public transportation monopolies that replaced the streetcars.

Santos challenged the law in federal court, which recently struck it down as a violation of equal protection and federal antitrust laws.[6] The city did not appeal the ruling, thereby allowing another favorable precedent to stand.

Occupational Licensing

Perhaps the most ubiquitous regulatory restraint on entry into businesses and professions are occupational licensing laws, enforced at the state and local levels of government. Such laws restrict entry into hundreds of professions, from medicine and law to cosmetology and plumbing. The laws ostensibly are aimed at protecting health and safety, but often are enforced to limit competition from newcomers. The laws typically are enforced by appointed boards comprised of members of the regulated profession, with the coercive power of government at their disposal.

When Taalib-din Uqdah and Pamela Ferrell opened Cornrows & Co. in Washington in the early 1980s, they provided a single highly specialized service: African hairbraiding. They paid taxes and trained their own braiders, hiring people off the unemployment rolls. Over ten years, there was not a single health or safety complaint.

But before long, the District of Columbia issued an order that Uqdah and Ferrell shut down their business or go to jail. The violation: failing to obtain a cosmetology license.

Cosmetology licensing in all 50 states and the District of Columbia requires extensive training and testing in various hair and skin care techniques. Many of these, such as the use of chemicals in the hair, the use of cosmetics, and care of fingernails, are not used at all by braiders, who merely wash, heat, and twist hair. By contrast, hairbraiding is not tested on the exam. Thus the irony that in order to lawfully practice the specialized craft of hairbraiding, an individual must demonstrate proficiency in all manner of activities in which she will never engage -- but none whatsoever in the service she will offer to the public!

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[6] *Santos v. City of Houston*, 852 F. Supp. 601 (S.D. Tx. 1994).

Uqdah and Ferrell tried for several years to have the law changed, even hiring a lobbyist to draft and push for regulations geared more specifically to the cosmetology profession, all to no avail. As with other entry-level regulations, powerful special interests (in this case the cosmetology profession) deploy massive resources to defend the protectionist status quo. Reform through ordinary political processes is almost never successful.

The Institute for Justice challenged in federal court the array of licensing requirements. The court was sympathetic, comparing the licensing regime to Soviet Russia. But under existing precedents, the judge compelled to uphold the law.

This case, however, demonstrates the efficacy of arguing in the court of public opinion. Favorable coverage in the *Wall Street Journal* and other media followed the case throughout, and Uqdah and Ferrell emerged as eloquent proponents of economic liberty. The crowning blow was an expose by John Stossel on the popular ABC television show, *20/20*, entitled "Rules, Rules, Stupid Rules." The District of Columbia cosmetology bureaucrats were revealed as oppressive and incompetent.

The result was that previously recalcitrant politicians suddenly decided to change the law. While the case was pending on appeal, the District of Columbia became the first jurisdiction in the United States to deregulate entry into the cosmetology profession. Instead of shutting down or going to jail, Uqdah and Ferrell today operate a thriving hairbraiding salon -- and provide both employment opportunities and an important service to the community.

A Driving Spirit

Ani Ebong, Rowland Nwankwo, and Girma Molalegne emigrated some years ago to the United States in search of opportunity. Each settled in Denver and pursued an employment path common to recent immigrants: driving taxicabs. Before long, they discovered that the three taxicab companies in Denver were poorly run and offered inadequate service in low-income areas. Sensing a market niche, the trio teamed up with another cab driver, a transplanted New Yorker named Leroy Jones. Together they launched Quick-Pick Cabs, a driver-owned taxicab co-op with plans to concentrate on low-income neighborhoods.

As required by state law, the new company had to obtain from the Colorado Public Utilities Commission a license to operate. When the men submitted their application, they were confronted with a barrage of opposition from the existing cab companies. When the process was over, Quick-Pick met the same fate that had befallen every other applicant for a new taxicab license since 1947: application denied.

This story is all too common: in most cities in the United States, taxicab licenses are restricted to an oligopoly, cutting off entry into a low-capital business that in a free market could provide opportunities to thousands of low-income entrepreneurs. In Washington, D.C., which has open entry into the taxicab market, nearly all the taxicabs are owned by their

drivers, many of whom are immigrants and minorities. In New York, by contrast, which has not issued any new taxicab licenses since World War II, the market value of a taxicab "medallion" is over $150,000 -- effectively foreclosing opportunities to economic outsiders.

Although the federal district court in Denver dismissed the lawsuit, favorable nation-wide publicity created pressure on the Colorado legislature to deregulate entry into the taxicab market. Since the Denver deregulation, Leroy Jones and his partners renamed their company "Freedom Cabs," and will begin operations with a fleet of 50 taxicabs this year. This victory in turn inspired two other cities, Indianapolis and Cincinnati, to deregulate the taxicab industry as well, following public hearings at which my partner, Chip Mellor, and Leroy Jones testified. But intransigent barriers exist in most other cities, blocking this important path to entrepreneurship.

Prevailing Wages

In 1931, during the midst of the American Depression, black workers from the south began moving north and offering to work on publicly funded construction contracts for lower wages than unionized white workers. The unions responded in typical fashion -- not by trying to out-compete the newcomers, but by seeking protectionist legislation. The result was the federal Davis-Bacon Act.

The Davis-Bacon Act applies to all federal construction contracts, covering 20 percent of all construction contracts nationwide and 25 percent of all construction jobs. It requires payment of "prevailing wages" -- often union wages -- on all such contracts. This destroys any competitive advantage offered by more efficient contractors. The law also imposes union job classifications, which forces non-union contractors to adopt inefficient work rules and severely reduces the opportunity to use low-skilled or unskilled workers.

In addition to costing taxpayers billions of unnecessary tax dollars, the Davis-Bacon Act has had its intended effect: protecting highly-paid, predominantly white union workers against competition from less-skilled, predominantly minority workers. In an industry that traditionally has provided plentiful entry-level opportunities, black unemployment rates are twice as high as white rates. Minority-owned firms, which typically are non-union, also are placed at a competitive disadvantage in bidding for federal construction contracts. Ironically, "civil rights" leaders and elected black politicians, valuing their labor union alliances more than their constituents, have opposed efforts to repeal the Davis-Bacon Act.

The Institute for Justice has filed a lawsuit in federal district court challenging the Davis-Bacon Act on the grounds it is racially discriminatory. The Institute represents five minority contractors, two of which went out of business as a consequence of the law; and three public housing tenant organizations who have been frustrated in their efforts to hire unskilled tenants to work in public housing jobs that are subject to the law. The court rejected the U.S. Department of Labor's motion to dismiss the lawsuit, and the case is heading to trial later this year.

This lawsuit is on a much broader scale than other Institute litigation in the economic liberty area. But it illustrates in stark terms the perverse consequences of economic regulations that limit entry into businesses and professions. Repealing the Davis-Bacon Act would remove one of the greatest barriers to opportunity in our society.

Economic Civil Rights Act

Summary

Among the rights Americans cherish the most are freedoms to pursue a chosen enterprise or profession. Yet of all the rights we deem fundamental, economic liberty has eroded most of all, to the extent that the "right" to receive a welfare check today enjoys greater legal protection than the right to earn an honest living.

Licensing and regulation of businesses and professions — often placed in the hands of the regulated industry— artificially limit entry and reduce competition. Myriad entry-level opportunities are affected by occupational licensing laws, government- imposed monopolies in businesses such as taxicabs and trash hauling, and restrictions on home-based businesses such as day-care centers.

The principal victims of these of these restrictions are people outside the economic mainstream, for whom the bottom rungs of the economic ladder are cut off. This model legislation would ensure that all such regulations are limited to legitimate public health, safety, and welfare objectives, and that individuals are free to earn a share of the American Dream.

The model legislation is based upon a draft by Clint Bolick, litigation director at the Institute for Justice in Washington, D.C., a public interest law center that challenges barriers to opportunity in the courts.*

Model Legislation

Section 1. This Act may be referred to as the "Economic Civil Rights Act."

Section 2. Statement of Findings and Purposes.

(A)The legislature hereby finds and declares that:

(1)The right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right.

(2)The freedom to earn an honest living traditionally has provided the surest means for economic mobility.

(3)In recent years, many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition.

(4)The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.

(5)It is in the public interest:

(a) To ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition;

(b)To provide the means for the vindication of this right; and

(c)To ensure that regulations of entry into businesses and professions are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives.

Section 3. { Definitions}.

(A)"Agency" shall be broadly construed to include the state, all units of state government and all units of government and shall exclude no entity established under the constitution or laws of the state or established by any entity which was itself established under the constitution or laws of the state.

*For further background on this issue, see Bolick, *Unfinished Business: A Civil Rights Strategy for America's Third Century* (San Francisco: Pacific Research Institute, 1990).

(B) "Entry regulations" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating in a market, or the opportunity to engage in any occupation or profession.

(C)"Public service restrictions" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice or other provision the effect of which is to exclude or limit the use of private firms from providing public services under the supervision of agencies, with or without the support of public subsidy and/or user fees.

(D)"Welfare" shall be narrowly construed to encompass protection of members of the public against fraud or harm. This term shall not encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

(E)"Subsidy" shall include taxes, grants, user fees or any other funds received by or on behalf of an agency.

Section 4. {Limitation on Entry Regulations.}

All entry regulations with respect to businesses and professions shall be limited to those demonstrably necessary and carefully tailored to fulfil legitimate public health, safety, or welfare objectives.

Section 5. { Limitation on Public Service Restrictions.}

All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfil legitimate public health, safety, or welfare objectives.

Section 6. {Elimination of Entry Regulations. }

(A)Within one year following enactment, every agency shall conduct a comprehensive review of all entry regulations within their jurisdictions, and for each such entry regulation it shall:

(1)Articulate with specificity the public health, safety, or welfare objective(s) served by the regulation, and

(2)Articulate the reason(s) why the regulation is necessary to serve the specified objective(s).

(B)To the extent the agency finds any regulation that does not satisfy the standard set forth in Section 4, it shall:

(1)Repeal the entry regulation or modify the entry regulation to conform with the standard of Section 4 if such action is not within the agency's authority to do so; or

(2)Recommend to the legislature actions necessary to repeal or modify the entry regulation to conform to the standard of Section 4 if such action is not within the agency's authority.

(C)Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 7. {Elimination of Public Service Restrictions}.

(A) Within one year following enactment, every agency shall establish, and within 18 months following enactment implement a routine private participation process with respect to the public services under its jurisdiction. Such process shall require that:

(1) Private companies be permitted to perform public services that can be produced without subsidy. An agency may establish reasonable requirements with respect to notice of entry and exit.

(2) Private companies be permitted to periodically and fairly compete for contracts to perform public services that cannot be produced without subsidy.

(3) Private companies not be precluded from commercially producing any service under the jurisdiction of the agency which is not included in (1) or (2) above.

(B) The competitive process required by (A)(2) shall be designed to allow the maximum extent of participation by private firms of all sizes and shall:

(1) Rely upon multiple contracts wherever feasible, and

(2) Not include any provisions or arrangements that have the effect of limiting competition or precluding participation except as necessary to achieve the standard set forth in Section 5.

(C) Every agency shall have the authority to establish reasonable standards of customer service with respect to public services under Sections (A)(1) and (A)(2) above.

(D) Every agency shall recommend to the legislature actions necessary to repeal or modify any public service restriction to conform to the standard set forth in Section 5 if such action is not within the agency's authority.

(E) Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 8. {Administrative proceedings}.

(A) Any person may petition any agency to repeal or modify any entry regulation into a business or profession within its jurisdiction.

(B) Within 90 days of a petition filed under (A) above, the agency shall either repeal the entry regulation, modify the regulation to achieve the standard set forth in Section 4, or state the basis on which it concludes the regulation conforms with the standard set forth in Section 4.

(C) Any person may petition any agency to repeal or modify a public service restriction within its jurisdiction.

(D) Within 90 days of a petition filed under (C) above, the agency shall either establish and within 9 months implement the requirements of Section 7, or state the basis on which it concludes the public service restriction conforms with the standard set forth in Section 5.

Section 9. {Prohibition of Restrictive Provisions}

(A) Notwithstanding any other provision of law, an agency shall not award or extend any franchise that has the effect of conflicting with either Section 4 or Section 5.

(B) Notwithstanding any other provision of law, an agency shall not execute or extend any contract provision, including any labor contract provision that has the effect of conflicting with either Section 4 or Section 5.

(C) This section shall not require the cancellation of any contract clause in effect as of January 1 of the year of enactment so long as the contract expires no later than 24 months after enactment.

Section 10. {Enforcement.}

(A) Any time after 90 days following a petition filed pursuant to Section 6 that has not been favorably acted upon by the agency, the person(s) filing a petition challenging an entry regulation or public service restriction may file an action in a Court of general jurisdiction.

(B) With respect to the challenge of an entry regulation, the plaintiff(s) shall prevail if the Court finds by a preponderance of evidence that the challenged entry regulation on its face or in its effect burdens the creation of a business, the entry of a business into a particular market, or entry into a profession or occupation; and either

(1)That the challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) Where the challenged entry regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by regulations less burdensome to economic opportunity.

(C) With respect to the challenge of a public service restriction, the plaintiff(s) shall prevail if the court finds by a preponderance of the evidence that on its face or in its effect the public service restriction limits participation by private companies in the provision of public services or other services under the jurisdiction of the agency, and either:

(1) That the challenged public service restriction is not demonstrably necessary and carefully tailored to fulfil legitimate public health, safety or welfare objectives; or

(2) Where the challenged public service restriction is necessary to fulfil legitimate public health, safety or welfare objectives, such objectives can be effectively served by restrictions that allow greater private participation.

(D) Upon a finding for the plaintiff(s), the Court shall enjoin further enforcement of the challenged entry regulation or public service restriction, and shall award reasonable attorney's fees and costs to the plaintiff(s).

Section 11. {Severability clause.}

Section 12. {Repealer clause.}

Section 13. {Effective date.}

Testimony of Leroy Jones before the U.S. House of Representatives Small Business Subcommittee on Regulation and Paperwork

June 7, 1995

My name is Leroy Jones. I am an owner and co-founder of Freedom Cab Company in Denver, Colorado. I am here to speak with you about laws and regulations that kill minority entrepreneurship and opportunity, particularly in the inner city. My personal story involves taxicabs. But the issues at hand is about much more than just one industry and just one man. It is representative of countless other people in many other fields. Taxicabs like many other occupations offer the prospect of earning a decent living, but like so many other industries it is closed to new people outside America's economic mainstream.

No one with a dream for success should ever lose hope. But holding on to that dream, in the face of a seemingly unbeatable opponent, is hard work. Trust me. I've been there.

America is the great experiment of the world. It is supposed to be the country where a person, if they work hard enough, can succeed. But many of us who want nothing more than the chance to earn an honest living and by our own example show to our children the benefits of work, are being denied that right. And we are not alone. Nearly 90 percent of cities with population of 50,000 or more restrict entry into the taxi industry--an industry perfectly suited to low-income minority entrepreneurs because it doesn't cost much money, it doesn't require a lot of training, the more you work the more your earn, and our communities are so under-served by existing cab service, there is a great market niche to fill.

With all the current restrictions, the only people who can afford to work within the system to own and operate cabs are the very rich. Do you know that a taxi medallion in New York City now sells for $140,000? In Boston its $96,000. This creates a system that isn't "justice for all." It creates a system that is "just us with money" and blocks another poor man's gateway to mainstream America.

For the past three years, me and my partners, Ani Ebong and Girma Molalegne, have all shared the dream of starting our own company--one that would be different than any other in Denver. For starters, most cab companies treat

drivers like sharecroppers charging them up to $400 per week for the privilege of driving a company cab. Because we have been drivers, our company would charge a lot less. That way we would make a profit and the person who did most of the work would also benefit.

We would also service Five Points, one of Denver's mainly minority communities, where we live. In Five Points, like in most inner cities, a cab is the only thing harder to get than a job. We knew if we could just get on the streets, we would be able to provide plenty of both to the community.

But the Colorado Public Utilities Commission, the regulatory agency that oversees the taxi industry in the state, blocked us every step of the way. No new cab company had been allowed to operate in Denver since 1947.

Let me repeat that. The state of Colorado had not let a single new cab company offer service for nearly 50 years. This was not because there weren't entrepreneurs like myself who wanted to provide better service. It was because of stupid government rules that protected existing companies from much-needed competition.

Unfortunately, what has happened in Denver is happening in many other cities across our great country. In almost every big city in your home states, taxicabs are heavily regulated and would-be entrepreneurs are blocked from competing. In cities such as Los Angeles, Chicago, Boston, New York, Miami, Buffalo, Houston, and San Francisco, and market entry is tightly restricted.

While some cities prohibit outright new entrants to the taxicab market, others achieve the same results while paying lip service to open entry. Many cities like Denver and Philadelphia say each new cab company must show "public convenience and necessity," is not being met--a standard that is almost impossible to satisfy. In my case, the Colorado Public Utilities Commission allowed my well-financed competitors to ask for unreasonable information, such as our five-year advertising plan and the list of over 100 potential drivers who were now driving for their companies', as a way to block our entry and put fear in the hearts of their drivers.

The only winners with current taxi restrictions are existing cab companies. The consumers are biggest losers (second only to would-be cab owners); they pay

higher fares, wait longer for a cab, and get worse service than they would with competition. The days when a man or women could work as a part-time cab driver to earn a little extra money for their kid's education are disappearing fast.

Taxicab regulations aren't designed to protect public health and safety. Regulations, such as background checks on drivers, vehicle safety inspections and insurance requirements, are needed. But what aren't needed are regulations whose only purpose is to protect existing companies from competition. These kind of regulations are all-too-common and are simply un-American.

Poor, minority, and elderly consumers are hit especially hard by these regulations. Members of these groups are less likely to own cars and are more likely to live in areas that are served poorly, if at all, by taxicabs and other forms of public transit. A study by the Urban Mass Transit Administration showed that by every measure, low-income people "rely more heavily on taxicabs than do higher income individuals." As another study showed "low-income people spend a larger percentage of their incomes on taxis than do high-income people, and in many taxi markets, consumption of taxi rides per capita is higher for low-income people. As a result, [these regulations] impose a disproportionate burden on low-income people."

Let's think for just a minute what it would mean to take away these kind of barriers. One study found regulations restricting entry of new cabs and preventing fare discounting cost consumers nearly $800 million annually. Moreover, removal of these restrictions would create 38,000 new jobs in the taxi industry, many of them for minority cab owner/operators.

But there is growing hope at the grassroots. Teaming up again with the Institute for Justice, I spoke to Cincinnati city council encouraging them to open up their cab market for the first time in decades. The market is now opened. The Institute also achieve the same effect in Indianapolis and the result are encouraging, but not surprising:

In Indianapolis, after only six months of deregulation, there was a 119 percent increase in the number of cabs operating with 32 new companies operating 52 cabs. Seventy-five percent of the new companies are female or minority owned. Nearly all of the new taxi owners are former drivers who long-wanted a chance to own their own business. Fares were reduced: Pick-up charges dropped 12 percent, the average mileage rate dropped three percent and the average first-mile rate

dropped seven percent. Cabs are safer with all companies passing police background checks as well as an enhanced safety inspection and carrying at least $100,000 in insurance coverage. The program has been so successful that since taxi deregulation, the city has not receive one written complaint; whereas they used to receive hundreds of complaints annually.

Within the next month, Freedom Cabs will become the first new taxi company to provide service in Denver when the first of our 50 taxis will roll out on Denver's streets. Our fleet of drivers will be made up of other would-be entrepreneurs, who like me, have been shut out of Denver's taxi market by over-reaching government regulations that stifled people's ability to earn an honest living.

Originally, my partners and I called our cab company "Quick Pick Cabs" to convey the quick and convenient service we wanted to provide Denver's riding public. But after the bureaucratic nightmare we went through, we decided to change our company's name to "Freedom Cabs" because that is what we wanted for ourselves and other cab drivers--freedom from the state-imposed taxi monopoly of three existing companies.

I encourage you to do whatever you can do to break down these barriers to entrepreneurship. They impair our ability to earn a good living for ourselves and for their families. They limit our opportunity to develop our skills and to work for ourselves, instead of others. It destroy our dream of a brighter future. There is no guarantee of success, but it is only by encountering this ban that we realized that we would not even have a chance to compete. Until all such oppressive bans are removed, minority entrepreneurs will be denied one of the most basic civil rights . . . the right to earn an honest living.

I want to leave you here today with two very different quotes but they both sum up what I'm trying to explain. The first is from James Brown. He used to sing, "I don't want nobody to give me nothing. Open up the door. I'll get it myself." Like the song says--black entrepreneurs don't need anything more than an opportunity. We'll take care of the rest ourselves.

The second quote talks about the risk to society that is created if this opportunity isn't available and if inner-city would be entrepreneurs are not given the opportunity to succeed or fail on their own merits. It say, "The most dangerous

creation in society is the man who has nothing to lose." Giving minority entrepreneurs a stake in our society by protecting their right to earn an honest living gives them a reason to be a positive part of society.

Thank you for this opportunity to speak with you today.

Minority Entrepreneurship and the Effects of Regulations

TESTIMONY OF JACK KEMP
Before the
Committee on Small Business
June 7, 1995

- Chairman Meyers, Representatives LaFalce and members of the Committee, it is a pleasure to appear before you today on the topic of minority entrepreneurship. I have been asked to paint a broader picture this morning and I expect some of my fellow witnesses to address the details of how regulatory barriers inhibit the formation and growth of businesses in general, and specifically in our minority communities.

- I can't emphasize enough that it is time we did something dramatic to help create jobs and business opportunities for the minority population centers of this nation. How can we possibly begin to address the problems of crime, drugs, and education without first recognizing that without jobs and opportunity, there is little hope and few reasons to graduate from school, stay off drugs, and resist the underground economy? Without the expectation that there is a good job waiting out of college or high school, there will be no link between effort and reward, and no way to address fully the social pathologies that are all too prevalent in our inner cities.

- Robert Kennedy once said, "To fight poverty without the power of free enterprise is to wage war with a single platoon while great armies are left to stand on the side."

- First, we need to reexamine who creates jobs in our economy and what incentives affect their decisions and actions. It's a well-known fact that most new jobs in America are created by entrepreneurs and small businesses, not the Fortune 500. In fact, these economic activists,

who put capital at risk to start new businesses, were responsible for nearly all the new jobs created in the 1980s.

- As Earl Graves, publisher of *Black Enterprise* magazine, has said, "If African Americans are ever to secure a full measure of freedom and independence in this country . . . they must not only be employees; they must become employers. They must not only collect paychecks; they must issue paychecks . . . They must not only have the dollars to stay in hotels; they must have [access to] the mega-dollars to own hotels."

- But over the past several years, the federal government has created an economic climate in America that is indifferent at best, and hostile at worst, to the agents of economic growth. Washington now imposes a vast array of income taxes, corporate taxes, payroll taxes, regulations, and mandated benefits that encourage businesses to keep employees to an absolute minimum. Today, the combined tax and regulatory burden on risk-taking -- the process by which new enterprises and jobs are created -- has climbed to the levels of the early 1980s.

- Madam Chairman, for over a decade now I have testified again and again in favor of enterprise zones in both the House and the Senate.

- The key idea behind the original enterprise zone proposals was that tax incentives could spur the creation of new jobs and new businesses. Entrepreneurs and investors would be rewarded for creating real private sector jobs through powerful incentives such as eliminating the capital gains tax in impoverished communities.

- The point must be made that the most intrusive regulation on businesses, and this is especially true for small businesses, is a high marginal tax rate and a complex, burdensome tax code. As

you may know, I have been appointed by Senator Dole and Speaker Gingrich to chair a commission on tax reform and economic growth. The primary purpose of the commission is to move beyond tax reform toward a complete overhaul of the entire tax system. We will design a system that is flatter, fairer, and simpler; one that will encourage strong economic growth, greater opportunity, and more jobs, income savings, and investment. Lower and fairer marginal tax rates are absolutely the most important thing we can do for the small business owner.

- Look, for instance, at the effect of a lower marginal tax rate on the job market in the 1980's. The 80's wasn't a decade of greed, it was a decade of growth. Unprecedented non-inflationary growth. The American economy produced nearly 20 million new jobs, more than Europe and Japan combined. Some five and a half million new businesses were created. And while Fortune 500 companies did trim down to meet the foreign and domestic challenges, the entrepreneurial and mid-level business sector took over, generating more than 90% of all net new jobs. America's real GNP surged by 32% during the Reagan-Bush recovery and revenues grew by nearly 40%.

- And it was not a narrow recovery for the select few, but a broad-based recovery that included women, Blacks, Hispanics, immigrants, and indeed all Americans. According to the Wall Street Journal, from 1982 to 1987, the number of black owned firms increased by nearly 38%, about triple the overall business growth rate during that period. Hispanic-owned businesses soared by 81%. Women owned firms expanded by 57% and their sales nearly tripled.

- Furthermore, a high marginal tax rate is made worse by the presence of a capital gains tax. When the top capital gains tax rate was reduced from 49 percent under previous law to 20 percent, the number of small company startups more than doubled, rising to 640,000 from 270,000, creating 15 million new jobs. By eliminating the capital gains tax in especially

depressed areas, we can put that enormous job-creating potential to work where it is needed most. Yet, some still fail to realize that a capital gains tax cut will not serve the rich. Rather, it will benefit those seeking to become rich. Instead of focusing on "What are the causes of poverty" we need to focus on "What are the causes of wealth?"

- Starting in 1986, Congress raised the capital gains tax by 40%, sharply reducing the flow of venture capital into new enterprises. Then, Congress passed and President Bush signed the 1990 Budget Agreement, which raised individual income tax rates and pushed millions of successful entrepreneurs into a higher tax bracket.

- Minority entrepreneurs have most of their capital gains in front of them. My personal opinion is that cutting the capital gains tax will most help minority firms by freeing up capital from status quo business and assets like blue chip stocks and government securities and expanding access to new, riskier firms and enterprises which are the best vehicle for minority advancement and wealth accumulation.

- Until the disincentives to take risks and create jobs are addressed, job growth will remain stagnant and Americans' concern over their economic future will climb. The key lies in unleashing the job-creating power of America's entrepreneurs and small businesses, not viewing them as a limitless revenue source for an insatiable federal bureaucracy. Our economic policy should be aimed at nurturing and expanding the recovery, not burdening American workers, investors, and businesses with higher taxes and more government regulation.

- A perfect example of the types of governmental handicaps can be seen in our very own District of Columbia. Decades of excessive tax and regulatory policy have created in Washington a vicious circle of middle class flight, job destruction, diminishing opportunity,

increasing demands on public assistance and a shrinking tax base. Of course, this kind of counter-productive social and economic policy is very expensive, and we should not be surprised that it has brought us to the present budgetary "crisis" that fills our newspapers and TV screens.

- This is why I am supporting a radical plan of eliminating the federal tax burden in the District to encourage economic growth and job creation in D.C. by instituting, among other provisions, a flat tax of about 15 or 16 percent.

- In brief, the plan has five basic components:

1. The federal income tax would be zeroed out and replaced by a 15 to 16 percent flat tax on personal and corporate income, with a $15,000 to $20,000 exemption on personal income, removing low income families from the tax rolls altogether.

2. The capital gains tax, which discourages the creation of new business and new jobs, would be eliminated altogether within the District lines for anyone who lives and invests his or her savings in the city.

3. Property taxes would be frozen; and in order to spur the renovation of the city's housing stock, no tax increases would be levied for improvements to an existing structure.

4. To promote entrepreneurship, historically the prime route out of poverty, all excessive requirements for business licenses would be removed. As I have often said, it should be at least as easy to get a business license as it is to get an unemployment check.

5. And most importantly, all low income residents of the District would own stock in a trust

created from publicly owned property, giving them a stake in the financial viability of the city and allowing them to benefit from an inevitable increase in property values.

- Even static estimates show that the city would better than break even. But the whole point of a federal exemption, tax cut and relaxation of bureaucratic regulations is that the stimulative effect on the economy -- the creation of new businesses, new jobs, and an expanded tax base -- would be almost certain to expand the city's revenues.

- It is extremely important that we enable entrepreneurs, and especially African Americans, women, Hispanics, and other minority businessmen and businesswomen, to take full advantage of the great opportunities available in our global marketplace. Barriers to the success of our entrepreneurs must be removed. With a new Congress that seems to be committed to the success of the entrepreneur, it is time to stop talking and start acting. With your leadership, Madam Chairman, and with the leadership of this Committee, I look forward to the needed relief of burdensome "over-government" from the backs of all of the small business owners in America.

STATUTORY AND REGULATORY BARRIERS TO MINORITY ENTREPRENEURSHIP

Report to House of Representatives
Peter N. Kirsanow
June 7, 1995

A. Statutory and Regulatory Constraints on Black Businesses: The New Poll Tax.

A wide variety of regulations ranging from those issued by the EPA to those promulgated by OSHA directly and indirectly stifle minority entrepreneurship and employment. Compliance with ADA and FMLA regulations, just to name a few, have substantial paperwork compliance costs. To the extent regulations raise the cost of doing business (or raise the cost of labor), they raise formidable barriers to marketplace and workplace entry that have a profound effect upon inexperienced, marginally capitalized firms. A disproportionate number of those firms (and their employees) are black.

The subject regulations are issued at the local and state level as well as by federal agencies. The cumulative effect of these regulations places a substantial burden on any start up. Paperwork compliance alone places an enormous drag on productivity. Just as the poll taxes of decades past chilled black voting today's plethora of regulations chill black entrepreneurship.

The number of regulations affecting business and employment is so great that a report thereon would easily run into the thousands of pages. They include occupational licensing laws, franchise fees, safety regulations, etc. They may be well intended, but each adds to the cost of business and labor. This report will, therefore, briefly review the effects of random federal requirements and the regulations promulgated thereunder: The Davis-Bacon Act; The Striker

Replacement Ban Order; and Minimum Wage Requirements. The effects of these sample regs can be extrapolated to regs promulgated under the ADA, FMLA, OSHA, etc.

B. The Davis-Bacon Act Renders Minority Firms Uncompetitive.

The Davis-Bacon Act requires federal contractors on public works and maintenance projects costing over $2,000 to pay "prevailing wages" to their employees. The prevailing wage is usually the union scale.

The Act was passed in 1931 with the intent of barring black non-union workers from the South from competing for jobs with white, more highly paid union workers from the North.

The relevant regulations of the Department of Labor insure that most contractors will pay their employees non-market rates. The General Accounting Office has found that the rates set under DOL regulations are inaccurate averages of prevailing area rates. The rates are frequently much higher than the true prevailing rates for the area.

The regulations are biased against non-union labor and non-union contractors. It is simply more efficient for contractors who are required to pay prevailing wages to hire workers through union hiring halls than to recruit labor off the street. The hiring hall method of recruitment places black workers at a disadvantage since the regulations place an operational premium on the employment of highly skilled or craft workers. Because black workers are under-represented among highly skilled classifications, fewer blacks are hired. Moreover, blacks are still under-represented in construction unions.

The negative effect of the Davis-Bacon Act on both entrepreneurs and employees is supported by considerable statistical as well as anecdotal evidence. For example, an analysis

by the U.S. Comptroller General found that "Davis-Bacon wage requirements discourage non-union contractors from bidding on federal construction work, thus harming minority and young workers who are more likely to work in the non-unionized sector of the construction industry." (Report to Congress, HRD-79-18; The Davis-Bacon Act Should Be Repealed, 32 (April 27, 1979)). More than 90% of black construction contractors are non-union and most black construction employees are non-union. They are disproportionately barred by the Act and its regs:

> One of the most striking effects of the law is the way it makes life difficult for the little guy: the immigrant, the black or woman contractor operating out of a rusty Ford van, the painter who hires students or unskilled labor as helpers. The Baltimore-based Enterprise Foundation, a developer of low-income housing nationwide, has found that even in areas like Dallas, where Davis-Bacon wages aren't out of line, the law drives up prices because small contractors are scared away by the paperwork and other requirements. "When the small firms shy away from the job, that kicks us up to the next level of contractor," says Gene Ruckle, a development specialist for the foundation. "When we go out to the bigger firms, they say 'Aha!' and give us a nice fat bid." Barry, The Washington Monthly (December, 1990) at 6.

The Davis-Bacon Act costs taxpayers approximately $2 billion dollars per year in inflated construction costs. Paperwork costs alone amount to $200 million dollars per year. The expenses are compounded by the incalcuable costs associated with barring black firms from competing on public works projects.

Most black contractors are small firms. Their ability to compete with larger firms depends on large part on cost efficiencies. That fact is substantially a function of lower overhead--including the relatively lower wages paid to their employees.

The Davis-Bacon Act places black firms at an extreme disadvantage by mandating that they pay inflated wages. The Act also forces them to adopt inflexible work

practices that destroys their ability to compete with larger firms by being more productive and efficient. The Act in effect requires firms to be just as inefficient as larger firms, freezing the status quo and removing any competitive advantage that might give smaller firms a foothold into the marketplace.

A statute enacted with an intent to discriminate on the basis of race and which continues to have a pernicious discriminatory effect is unconstitutional and must be repealed.

C. Minimum Wage Increases Raise The Cost of Doing Business.

Labor Secretary Robert Reich has advocated raising the current minimum wage of $4.25 per hour by at least $1.00. He also supports indexing the minimum to the rate of inflation.

The proposal is ostensibly pro-worker. Indeed, the original intent of Congress in enacting the minimum wage law was to insure "a minimum standard of living necessary for the health, efficiency and well-being of workers."

But raising the minimum wage by indexing it to inflation is harmful to the well-being of many unskilled workers, a large proportion of whom are black. It also penalizes black entrepreneurs who are less able to absorb mandated wage increases. The minimum wage law is particularly devastating to black youths, whose unemployment rate exceeds 65% in some areas. Nearly forty years ago, before substantial increases in the minimum wage, the unemployment rate for black youths was actually lower than that for white youths. Since that time, black youth unemployment has far surpassed that of white youths.

Even during Jim Crow, many businesses employed black kids to perform general labor. Although some of the youth were unskilled and poorly educated, and the task assigned (sweeping floors, pumping gas, moving product, etc.) were simple, the kids were, in the strictest

sense, valuable employees. That is, they were worth every penny they were paid.

But as the minimum wage rose, the relative value of unskilled labor did not. Gradually, employers just found other ways to get the job done. And the teens, without family businesses or a network of contacts to fall back on, were increasingly left without jobs.

Studies by the Bureau of Labor Statistics and others reveal that after adjusting for other factors, a 10-cent increase in the minimum wage has historically resulted in a loss of 30,000 to 50,000 full-time jobs. Industries employing youths or low-skilled workers are usually hardest hit.

The reason for this displacement is that the government-mandated increase at least temporarily prices marginally skilled workers out of the workplace. It is an arbitrary standard that distorts the labor market.

The displacement affects not only those earning the minimum but those whose wages are bumped upward by the new minimum. Consequently, the wage scales of a significant percentage of job classifications escalate, further driving up overall labor costs. Moreover, tying the minimum wage to inflation permanently skews the entry level labor market, with a domino effect upon the wage levels immediately above.

The minimum wage law is but one of a number of government mandates such as unemployment insurance, ADA compliance, workers' compensation insurance, family leave, overtime, etc. These mandates may be well intended and have varying degrees of utility. Nonetheless, each adds to the cost of labor.

Their cumulative effect is to erect formidable barriers to workplace entry for unskilled workers: At some point the cost of employing the unskilled worker begins to exceed

his value to the employer. (The Department of Labor's own statistics show that these requirements have caused a 30 percent increase in per-worker costs in just the past few years.) It is no coincidence that black unemployment has risen with the proliferation of employment regulations.

Proponents of the minimum wage increase counter that since it applies to all U.S. employers, no specific employer is unfairly disadvantaged. That argument may have had some limited validity in the past, but it ignores the realities of the contemporary global marketplace. The labor cost of a U.S. company producing widgets must now be competitive with those of Taiwanese widget companies.

When labor costs affect competitiveness, an employer has at least four options:

Layoffs. The quickest way to reduce labor costs is to trim the size of the work force. Generally, those with the fewest skills and least seniority are the first to go. It is often the case in many industries that the least senior employees are black.

Automation. When a minimum wage hike causes the cost of labor to eclipse that of certain capital investments, the low-skilled worker may find himself permanently replaced by a machine. Machines typically do not file workers' compensation or overtime claims.

Relocation. The added costs associated with a higher minimum wage may also make it more profitable to export jobs, despite tariffs and increased shipping costs. We need not worry that the North American Free Trade Agreement might create a "giant sucking sound of jobs going south," as so vividly described by Ross Perot. A perpetually rising minimum wage insulated from market forces could provide similar sound effects.

Temps. Those who advocate minimum wage increases apparently presume that

employers will take no measures to prevent erosion of profit margins due to spiraling labor costs. Employers seeking to avoid metastasizing regulatory burdens have increasingly resorted to temporary or part-time employees.

The Bureau of Labor Statistics reports that after the most recent 11% minimum wage hike, the number of temporary workers grew by nearly 20%. The minimum wage has doubled in the last 20 years. During the same period the use of temps has quadrupled.

Of course, the mushrooming use of temps and part-timers is not solely attributable to minimum wage hikes. But when the minimum wage drives overall labor costs to a certain critical mass, temps become a cost-effective alternative. As with machines, the use of temps and part-timers generally does not trigger as many costly federal and state requirements as does the employment of full-time workers.

Many black businesses simply cannot employ any of the four foregoing alternatives. They therefore are less able to absorb a minimum wage hike and remain competitive. The vast urban wastelands devoid of businesses that once thrived in black communities are at least partially the result of increased labor costs.

An inflation-indexed minimum wage would aggravate the chronic under-employment and unemployment of those it is designed to benefit. It would impair the ability of many black entrepreneurs and workers to gain that crucial first foothold on the ladder of economic upward mobility. The result is a persistent dependency class.

It is one thing when the analytical sclerosis of bureaucrats punishes the intended beneficiaries of government policy. After all, good intentions frequently have bad consequences. It is quite another for disingenuous politicians to champion, under the banner of "fairness," or

"middle class rights" policies proven to be pernicious.

D. The Striker Replacement Ban is a Bargaining Tax That Will Render Smaller Firms Uncompetitive.

On March 8, 1995, President Clinton issued an executive order debarring any federal contractors who invoke their legal right to replace striking workers. Since many minority businesses contract or subcontract with the federal government and tend to have a sizable percentage of black employees (due in no small measure to E. O. 11246), the order would have more than a tangential effect upon black business and employment. This is especially true considering that the non-construction unionized workforce is increasingly black. Indeed, in 1994, 21% of all black workers were unionized, compared with 15% of all white workers.

The law currently permits employers to permanently replace striking workers under certain conditions, a right that has been in existence since the Supreme Court decided NLRB v. Mackay Radio and Telegraph Co. more than fifty years ago. The right to strike and the right to replace are pivotal elements of a federal labor policy that recognizes economic self-help as vital to the collective bargaining process. The balancing of these economic self-help remedies allows bargaining disputes to be decided by the interplay of economic forces. The economic rationale of the federal policy is that an employer's ability to hire permanent replacements is the most reliable barometer of the legitimacy of the strikers' wage demands. For example, suppose the employees of the"Widget Co." believe that workers with their level of skills and training in the widget industry should be paid $10.00. The company maintains that $8.00 is more consistent with the current marketplace. Negotiations reach an impasse and the employees strike, asserting that the company's offer is below the prevailing market wage.

If the Widget Co. can easily hire permanent replacements at $8.00 an hour, it is a good indication that the $10.00 demanded by the employees exceeds the market rate for workers in the widget industry. The Union must, therefore, make some movement in its bargaining demands or weather an unproductive strike.

On the other hand, if the Widget Co. cannot hire permanent replacements at $8.00 an hour, it must give serious consideration to the higher Union demand or risk going out of business. Under either set of facts, the company's labor costs will ultimately be competitive with the prevailing industry standards. The company will be less likely to be forced out of business due to artificial, non-competitive labor costs.

Implementation of the striker replacement ban would radically alter the bargaining balance by eliminating market forces from the equation. Consequently, any inclination to strike would not be sufficiently tempered by economic reality.

Implementation of the proposed order would spur the development of at least three strike scenarios:

- Deprived of the right to permanently replace strikers, a company may be forced to capitulate to an inflated Union wage demand unrelated to prevailing market conditions. By doing so, the company may be uncompetitive and may be forced to cut back operations or even cease business.
- Under a second scenario, a company does not give in to the inflated wage demand of striking employees. Because it is barred from hiring strikers to continue operations, the company's customer-base dwindles, cutbacks

ensue and it may eventually go out of business.

- The third alternative is for a company to choose the path of least resistance. American businesses already chafe under regulations and constraints perceived by some as burdensome. The order will also provide companies with further impetus to export jobs to countries without similar restrictions.

Under any of the aforementioned circumstances, the workers whom the order purports to benefit suffer. The jobs eliminated may never return in this era where American business and labor must compete against their counterparts around the world.

While unfavorable ramifications abound with its issuance, the order will do little to augment protections already available to striking workers. Indeed, the use of permanent replacements is currently limited by a variety of constraints--so much so that the option is rarely used.

Permanent replacements may not be used without financial peril in a strike precipitated or prolonged by the employer's commission of an unfair labor practice.

Economic strikers not guilty of strike misconduct may not be discharged by the employer and are entitled to reinstatement upon making an unconditional offer to return to work. In addition, employers may not discriminate against returning strikers with respect to wages, benefits, seniority or terms and conditions of employment. Strikers even retain voting rights in representation elections after the strike starts.

Black businesses would also have particular difficulty weathering a strike or the threat thereof. Most black business do not have a sufficient capitalization, inventory, customer

base, etc. to survive even a short-term strike. Therefore, they would likely find themselves in the first scenario above.

Moreover, the order lags behind the evolutionary curve of labor bargaining tactics. In recent years, Unions have increasingly employed a number of sophisticated alternatives to strikes which are sometimes more effective and carry fewer consequences for workers. Some of the alternatives include consumer boycotts, publicity campaigns and administrative actions through federal regulatory agencies.

The striker replacement ban amounts to a bargaining tax upon business. For many black firms, the tax will cut into margin. For others, it will deter them from pursuing certain federal contract opportunities.

D. Occupational and Business Fees and Licensing Raise the Cost of Marketplace Entry.

Entry into various businesses and occupations is regulated by federal, state and local governments. Most licensure laws are not a result of consumer groups lobbying for higher standards. Rather, they are the direct consequence of occupational incumbents' desire to limit the number of practitioners within their respective occupations, thereby increasing demand and driving up prices.

Licensure laws cover a number of businesses, including plumbers, electricians, beauticians, taxi drivers, food service, pest control, etc. Licensure laws pertaining to these businesses often contain candidate requirements only tangentially related to actual job performance. For example, minimum educational requirements mandating that e.g., cosmetologists having a high school diploma often have no bearing on a candidate's ability to

competently perform their occupational tasks.

Educational standards wholly unrelated to job duties are unlawful because they have a disparate impact on certain protected classes. Yet arbitrary occupational licensing standards that have the same effect abound.

Licensure laws often require attendance at "accredited" or "approved" schools for specific periods of time. Again, these requirements are often unrelated to actual competence. The tuition levels frequently deter potential impecunious entrants. In fact, several studies have shown virtually no difference between the performance of those meeting licensure requirements and those who do not. Licensure laws are yet another artificial barrier to entry that disproportionately affects blacks.

Testimony of Art Pearson
before the
U.S. House of Representatives
Small Business Subcommittee
on
Regulation and Paperwork

June 7, 1995

My name is Art Pearson. I am an electrical and general contractor in Tacoma, Washington. Much of my business involves contracts for highway construction and traffic and street lighting--all federally aided Davis-Bacon work.

Pearson Electric & General Contracting Co. is a union shop that employs more than a dozen employees. Because we are a union shop and unions in Washington State are mainly white, nearly all of my employees are white. Of Washington State's 109,000 construction workers, only 2,000 are black.

I am concerned about the rising tide of joblessness and violence in the black community. As an African American, I believe I have an obligation to improve the quality of life in my community. But the Davis-Bacon Act is standing in my way.

As many of you know, the Davis-Bacon Act was passed in 1931 at the urging of unions. With Davis-Bacon, Congress neutralized black labor competition by

requiring that "prevailing wages" be paid on all federal projects valued at more than $2,000--in essence, all federally financed construction projects. In practice, "prevailing wages" meant union wages, effectively counting out any laborer who could not command union-scale wages. Well-capitalized companies could afford union wages, but their unions usually kept blacks out. Non-unionized businesses--which were often less well capitalized--could not afford to pay those prohibitive rates on labor.

Today, construction unions still try to keep the black labor pool out. And many black-owned firms are still small and nonunion. To seek Davis-Bacon contracts minority firms must not only pay inflated wages and adopt inefficient work practices, but must expose themselves to huge compliance costs and threats of litigation and union harassment. Few minority-owned firms win Davis-Bacon contracts, and many others give up trying. The widening net of federal government means that, in practice, few contracts available to my business, for example, are outside the power of the Act. Davis-Bacon remains a principal reason why blacks are unemployed at twice the rate of whites in the construction trade. With less than 13 percent of the American people involved in organized labor, it is reasonable to ask why the federal government is spending one-eighth of every project dollar limiting the access of the other 87 percent of the work force. Union activity is protected in an array of policies and agencies. There is no reason for the Federal Government to also be the union steward.

If the Davis-Bacon Act were removed today, I, and other contractors like me, would be able to hire more people for the same or fewer taxpayer dollars, complete more projects for the same tax dollars, and complete them more quickly.

Davis-Bacon is a waste of taxpayer funds. The Act accounts for 20 percent of the $232 billion construction business nationally. Repealing the Act would save the federal government approximately $1 billion on construction costs and $100 million in administrative costs each year. Costs of compliance with the Act for the construction industry total nearly $190 million per year. The Act's repeal would also result in the creation of an estimated 31,000 new construction jobs, most of which would go to members of minority groups.

Stated as simply as possible: Davis-Bacon means federal government contractors must hire fewer workers but pay them exorbitant wages, work on fewer construction projects and to complete them more slowly.

The amount of paperwork that a contractor is required to fill out as a result of regulations governing Davis-Bacon also prevents small, minority-owned firms from seeking Davis-Bacon projects. Many small firms do not have available personnel with the necessary expertise to complete myriad forms and reports the regulations require. This provides a great advantage to the larger (and usually

highly unionized) firms who have more resources to devote to complying with the Act's requirements.

At Pearson Electric, we spend hour after useless hour filling out certified payroll reports, monthly utilization reports, labor and industries affidavit of wages, equal employment opportunity reports, reports on subcontractors, reports on approval of material sources, certificate of material origin reports and so on. The paperwork requirements are so extensive in fact, that I thought at one time of getting out of the construction industry and beginning a firm dedicated solely to processing federal paperwork for other firms. What is truly unfortunate is that I tried to hire a number of minority subcontractors who would have nothing to do with the federal contracts I had won because the paperwork requirements were too burdensome.

Most of the work I do as an electrician involves traffic signals and streetlights. Seventy-five to 80 percent of that work is unskilled labor work. This involves removing sod or grass, digging trenches or removing asphalt, pouring concrete and making wooden forms, installing conduit, and replacing all the same. It does not require a skilled craftsman as the union job classification dictates. But because of the union job classifications, if the job even remotely involves electrical work, it must be performed by an electrician who is paid $27 per hour. This is the equivalent of requiring everyone in a hospital's operating room, from the scrub

nurse and orderly to the doctor who is performing the surgery, to be paid at the rate of a trained physician. These requirements are a waste of taxpayers' money and they are just another way of keeping poor people from these higher paying jobs. There is no valid justification for paying a skilled electrician $27 an hour to dig a ditch when you can hire three people who are willing to dig that same ditch for an equal total wage.

Just for a minute, let's imagine we apply this foolish requirement to your offices here on Capitol Hill. I'm sure each of you have a hard-working staff member who answers phones, attends legislative meetings on your behalf, assists you in speech writing and might occasionally even drive you to an event. Now apply what Davis-Bacon does to my business to your business. Imagine the headaches you would get trying to classify, under penalty of law for mistakes, that one hard-working staff member's time spent between the clerical wage earned for the hours answering phones verses the staff wage earned while attending legislative meetings verses the speech-writers wage earned to create your next major address verses the drivers wage earned while driving you to events. It is enough to drive you crazy or out of business or both.

Our federal government must apply the same common sense we small businessmen have always used.

From the start the Davis-Bacon Act effectively foreclosed the only means by which unskilled blacks could learn the necessary skills to become skilled workers. The initial set of regulations created by the Department of Labor relating to Davis-Bacon's enforcement did not recognize categories of unskilled workers except for union apprentices. As a result of this failure, the regulations required a contractor to pay an unskilled worker who was not part of a union apprenticeship program the same wage paid to a skilled laborer. Given that blacks were poorly represented in the unions and their apprenticeship programs, unskilled minority workers were almost completely excluded from working on Davis-Bacon projects.

This claim is supported by the available statistical evidence. Prior to the passage of the Davis-Bacon Act, blacks suffered from unemployment at approximately the same rate as the general population. After Davis-Bacon became law, the rate of minority unemployment began to deviate from that of whites.

The difference in unemployment rates is especially pronounced in the construction industry. According to a recent study by the National Urban League, in the fourth quarter of 1992, 26.8 percent of all blacks involved in the construction industry were unemployed, compared to only 12.6 percent of white construction workers.

The young men who are unemployed but seeking skills are the ones perhaps most negatively impacted by Davis-Bacon--no one will pay $60,000 a year to train someone who pounds nails and must be classified as a "carpenter" as is required in Boston; or pay $40,000 a year to train a ditch digger in Seattle. Rather than hiring them, they will continue to be left behind. The only way for unskilled would-be laborers to become skilled craftsmen is to break into the ranks of the employed as "helpers." Craftsmen could train those who are currently unskilled and help them reach the first rung on the economic ladder to better paying work.

For example, when I tried to hire a dozen black youths for a simple job of tearing off wallboard on a Davis-Bacon project, the labor union refused to allow it even though I was willing to pay their union dues. I was told there were 300 members ahead of them. Another opportunity to train minority workers was lost.

Despite Davis-Bacon's racist history and its continued discriminatory effects, only one constitutional challenge has been filed to wipe this vestige of Jim Crow away. My company, along with four other black-owned construction firms, has joined others as plaintiffs in a lawsuit filed by the Institute for Justice, challenging the constitutionality of the Act.

I've known the discouragement of a young worker who waits in a union hall looking for work, but because of their race they are rejected or at best delayed in

their placement. Members of Congress, the federal government has no place maintaining a law that promotes such discrimination.

If there is one summary I can leave you with it would be this: In 25 years in the construction business, I've seen the big picture of the Davis-Bacon Act and how truly damaging this Act has become to the minority community. If we do not do something about the way the Davis-Bacon Act wastes our taxpayer dollars, requires otherwise efficient companies to become inefficient and perpetuates chronic inner-city, minority unemployment, it will only create additional problems. I encourage to you repeal Davis-Bacon and allow black would-be construction workers to get to work.

I thank you for this opportunity to speak with you today.

Your Voice on the Hill

National Association of Minority Business
8300 Boone Blvd., Suite 400
Tysons Corner, VA 22182-2626
(703) 918-0314 Tel. • (703) 918-0380 Fax

TESTIMONY BEFORE THE
SMALL BUSINESS COMMITTEE
of the
U. S. HOUSE OF REPRESENTATIVES
TOPIC: Regulatory Barriers to Minority Entrepreneurs
June 7, 1995

Thank you Congressman Talent and members of the committee for providing the opportunity for me to speak on behalf of the minority business community. I am the chairperson of the National Association of Minority Business. The prime purpose of the Association is to insure fair and equitable treatment of minority businesses from a legislative and regulatory standpoint. Since affirmative action became the burning issue in 1995, my plate has been full in meeting the challenge of protecting our members and their businesses. Considering the full-force legislative and regulatory attacks on the minority business community, the possibility of removing regulatory barriers seems like a glimmer of light in the darkness.

First of all, I suggest that not all regulations are barriers. The purpose of regulations is usually to protect and ensure the rights of all citizens. Historically, regulations were established to correct some fault in the system. Since there are so many regulations that impact the small and minority business community, my comments are broad-based. My testimony

will address the Davis Bacon Act, the Service Contract Act, Federal Acquisition Streamlining Act, The Federal Acquisition Reform Act, subcontracting, regulatory development, coordination between federal and state agencies, and communication.

The Davis Bacon Act

First of all, let me say that I am not an expert on the Davis Bacon Act (DBA), but I will present my understanding gathered from a coalition of minority business associations.

It is interesting that the DBA was put into place during a similar time in our history when the sentiment was anti-minority business. At that time, the primary purpose was to prevent non-unionized Black workers from competing with unionized white workers. The DBA effectively placed onerous hiring and administrative burdens on the minority business community.

The DBA requires that categories of labor be hired at pre-defined labor rates. The way this translates into business practice is that a business employing a laborer at $10/hour may have to pay that same laborer $20/hour when bidding on a contract covered by the DBA. Additionally, the DBA inhibits a minority business or any other business from bringing on lower wage employees in a training mode, because no one is going to pay $20/hour to train an unskilled person.

The other burden that the DBA places on the minority

business is in the area of weekly wage reports. The average small minority business owner does their own marketing, project management and administrative work. The addition of having to develop, maintain and submit weekly wage reports becomes an onerous burden on the minority business owner.

One of the good things about the DBA is that it sets payment standards. In other words, the DBA has its pluses and minuses. Our strong recommendation, is that the Committee raise the contract threshold from $2,000 to $100,000. This would allow the minority business enterprise to bid their existing workforce and eliminate the unnecessary paperwork. After these modifications to the DBA are made, then the Committee should review the DBA for other ways to improve. The Davis-Bacon Act should not be repealed, but it should be strengthened.

The Service Contract Act

The Service Contract Act (SCA) in conjunction with the Depart of Labor (DOL) Wage Determination Rates do for the service industry what the DBA does for the construction industry. The primary difference is that the rates are usually too low. The impact on the minority business enterprise is that they cannot afford to hire the caliber of staff necessary to accomplish the tasks and they do not have the size of company to bid the low rates and still make a sufficient profit. During these tight

economic times, the SCA/DOL rates become the defacto bid rates, and most MBE's cannot afford to bid. In other words, if the Committee decides to review the DBA, then it also needs to review the SCA/DOL rules because the SCA/DOL actually effects more businesses then DBA.

Federal Acquisition Streamlining Act

The Federal Acquisition Streamlining Act (FASA) has created major changes in federal procurement. A large percentage of the minority business community is not even aware of the changes and no one, including Congress, has any idea of the real impact of those changes. The MBE community does not have the wherewithal to keep abreast of all of the regulatory changes and when they do become aware, it takes time to absorb and adjust. In my opinion, it would not be wise for Congress to continue to make major changes to those policies that directly impact the MBE community.

For instance, FASA was originally written to provide electronic notification to the small and MBE community under the Simplified Acquisition Threshold (SAT). Now the implementing regulations are being written so that the contracting officer can simply call three business and obtain a quote.

The other regulatory change that is occurring is in the area of full and open competition. Under the new Federal Acquisition Reform Act of 1995, bidders will be pre-qualified, and the

qualifications are slanted towards long established businesses. Because of the limited resources of the MBE community, Congress must act as the watchdog and insure that these types of regulatory changes do not negatively impact the MBE's.

Subcontracting

The area of subcontracting has continued to be a bone of contention for the MBE community. There are laws on the books that require prime contractors to make their best efforts to subcontract a certain percentage of their contracts to the small and MBE community. The prime contractors have never complied with the existing laws and make a mockery of the laws through activities such as exhibit attendance. Due to the economic downturns, the prime contractors are more and more reluctant to subcontract any of their contracts. I urge Congress to insure that current regulations requiring subcontracting plans remain in place as they are written and that those regulations become enforced.

Regulatory Development

It is the recommendation of my Association that the MBE community become involved in the regulatory development process. Mechanisms and procedures should be established for effective two-way communication and interaction with affected MBE's. The normal channel of communication, the FAR, cannot be the only

means of communicating, because many MBE's do not have access. MBE's are stakeholders in the process and it is important that Congress insure that outreach is conducted to bring MBE's into the regulatory development process. MBE's need to have input not only during the development of regulations but also prior to amendment or deletion.

Coordination between Federal and State

There are many cases when paperwork is duplicative between Federal and State agencies. One of the most discussed areas is in the area of certification. For instance, when a company does business in several states, they are often required to be certified as an MBE in each state and sometimes in different cities/counties within the state. We have one member who has a full-time staff person to file and keep current all of their certifications across the country. This type of paperwork is absurd and needs to be abolished as soon as possible.

Communication

As mentioned earlier, communication through the Federal Acquisition Register (FAR) is not an effective means for the MBE community. Even Congress is remiss in informing the MBE community about upcoming legislation that effects the MBE community. MBE's do not have the financial wherewithal to hire lobbyists to track legislation or regulations, therefore, it is

incumbent upon the Congress to see to it that MBE's are kept informed.

That is the end of my testimony today. I have tried to broadly address some of the problems with regulations effecting minority entrepreneurs. I welcome the opportunity to provide additional information on any of the subjects that I have addressed either today or in the future.

Respectfully submitted,

Aleta Robinson Wilson

STATEMENT

OF

TAALIB-DIN ABDUL UQDAH

CO-OWNER

CORNROWS & CO.
WASHINGTON, D.C.

THE EFFECTS OF OVER REGULATION ON SMALL BUSINESS

BEFORE THE

SMALL BUSINESS COMMITTEE, SUB-COMMITTEE ON REGULATION AND PAPERWORK

UNITED STATES CONGRESS

HOUSE OF REPRESENTATIVES

JUNE 7, 1995

Good Morning Mr. Chairman, members of the Committee, staff and invited witnesses. I am Taalib-Din Abdul Uqdah, co-owner of Cornrows & Co., a small business enterprise located, here, in Washington, D.C. I am forty-three (43) years old, a 1970 graduate of Eastern High School, here in the District of Columbia and have been self-employed for over twenty (20+) years. I am not an economist, have never been to college and have no background in law, accounting, medicine or politics.

I tell you these things about myself in order for you to get a clear picture as to my perspective on life as it relates to small business and my testimony before this committee today. It is not based on any theories of law, science or economics; so don't expect any earth shattering revelations to pour forth from my lips or from these pages.

What you will get from me is the same simplicity which I was raised with on Benning Road and carried with me to Anacostia and on to upper northwest Washington; and that is a strong sense of the difference between what is right and what is wrong. What you can further anticipate from me is the truth, smattered with doses of common sense. I have no agenda, hidden or otherwise; I am affiliated with no wing of any political party; nor do I hold any memberships in any private clubs or secret organizations. I am a practicing Muslim. Islam is my religion; and as such I have a great deal of respect for commerce and trade. My purpose here is twofold; one to discuss the problem of burdensome federal and local regulation and how it affects the small business entrepreneur and two, what I perceive may be some of the solutions to those problems created in our recent present.

I consider myself to be an expert on small business affairs (or what I call minuscule economics), by virtue of the fact that this is all I've done for nearly half my life. I've owned a 24-hour market, selling everything from fruits and vegetables to Christmas trees, fireworks, apple juice, fish and flowers. For two years, I owned and operated my own public relations, signs and advertising business. But my most proudest achievement to date and the most frustrating has been the ownership and operation of Cornrows & Co.

Proudest, because by God's Grace, in 1980 Pamela Ferrell, (my wife and business associate) and I took five hundred ($500.00) dollars, three employees, a four-year lease on someone else's building and a purpose other than making money and turned it into a half-million dollar a year operation, with 12 employees, a single location with an international reputation and ownership of our building valued at over $400,000.00.

Frustrating, because we spent more than 10 of our 15 years in business fighting the District Government in their feeble attempts to close down our lone establishment for operating a beauty salon without a license; spending thousands of dollars to defend our position and launch an offensive against all three branches of District government while losing hundreds of thousands of dollars in business revenue in the process. Where our business would have been, how many people we would have employed, how much we would have earned is speculative. What is not speculative is that the ten years I spent fighting the District Government I could have spent furthering the growth of our budding industry.

Cornrows & Co.'s story is truly a young entrepreneurs dream come true. We started in 1980 as a professional hair braiding salon, offering African and American style braids. By 1983 we had opened up the country's first training academy in order to funnel a pool of qualified professionals, for our use, into an emerging growth industry. At its peak, we employed 14 full-time individuals, consistently grossed well over $250,000.00 per year and paid over $30,000.00 a year in various types of federal and local taxes. We boasted a single location with a world wide reputation and a customer clientele base which numbered well over 20,000 people. We were, (and by God's Grace still are), the premier hair braiding and natural hair care establishment in the world today.

Our only mistake and our biggest crime, was being located in the District of Columbia, where a corporation counsel, a board of cosmetologists and barbers (who were all salon owners) and its governing regulatory agency joined forces with an uninformed city council and two mayoral administrations to try and close our tiny business down for the unspeakable crime of operating a beauty salon without a license. The violation: our refusal to comply with a 1938 Jim Crow era law which said (in part) " . . . anyone involved in the arranging and styling of hair . . . . must have a cosmetology license." The sentence: up to 5 years in jail and/or a $5,000 fine.

No matter what we did, who we spoke with, what letters we wrote or who wrote to us; who we met with or testified before; no one listened, no one cared. It was not important to anyone, but us. We were characterized and painted as just troublemakers and dumb hair dressers who were trying to get around the established licensing scheme and wanted a special exception just for ourselves, to the exclusion of everyone else.

The problem for us was ten fold. 1) The cosmetology courses, which had no applicability to hair braiding, offered 1500 hours or 9 months of instructions on chemical relaxers, manicures, pedicures, facials, cutting, coloring, curling and eye brow waxing at an average cost of $4,000. 2) Schools of cosmetology did not teach hair braiding. 3) The instruction of hair braiding did not appear in any cosmetology books and there were no books of instruction on hair braiding at the time. 4) There was no license for hair braiding. 5) Even if we were to comply with all the (then) present regulations, we still could not teach hair braiding and have others become licensed. 6) We refused to submit to the jurisdiction of the cosmetology board. 7) We refused to allow the thousands of hours invested in perfecting

the art of hair braiding and cornrowing to be reduced down to a mere definition of "arranging and styling of hair." 8) The District, as many other states, recognized separate licenses for other cosmetology disciplines, but to this day, all exclude hair braiding. 9) We did not feel that we were in violation of the law, just because the city did not have a law which governed what it is that we did; and further, our refusal to be categorized as something we were not. 10) The statute we were accused of violating was over 50 years old and had no direct or indirect applicability to present day industry standards.

From 1982 until 1993, (11 years), we endured the following: scores of correspondence and meetings back and forth between every branch of D.C. government and city official imaginable, four (4) paid attorneys, two (2) introductions of proposed legislation (1 died in committee), fourteen (14) appearances before the board of cosmetology, four (4) council hearings, two (2) fines, (totaling $1,000), one (1) cease and desist order, four (4) department investigations, two (2) threatening letters from the corporation counsel, one (1) civil adjudication court procedure and appeal, two (2) mayoral administrations and one (1) federal lawsuit.

Our only saving grace during this entire process happened in 1990 when we introduced ourselves to Clint Bolick and the Institute for Justice. Immediately, they provided for us the relief we had sought. Not only were they able to tell us what our problem was before we could tell them, but they also put some definition to what we were only able to distinguish as right and wrong. They called it economic liberty; the constitutional right of every American citizen to be able to pursue economic freedom without the burden of government regulation. We were a perfect match. What they provided to us was some much needed understanding to a long standing problem that, to

us, defied comparison. The best part of it all was that we didn't have to convince them we were right and they represented us free of charge.

Embarassed into submission after worldwide notoriety highlighting our plight and the city's indefensiable position, (then) Mayor Sharon Pratt Kelly signed into law the Cosmetology Amendment Act of 1992 on January 8, 1993. It provided five (5) separate license categories within the cosmetology industry, recognized hair braiding as a separate discipline and placed a professional hair braider (Pamela Ferrell) on the board. Deregulation would have been preferable to more regulation, but we found an 11 year fight easier than a lifetime commitment.

Cornrows & Co. continued its meteoric rise to success and growth as the leaders within its industry. We have appeared in or on every major print and visual medium in this country, including a segment on ABC's 20/20 news program entitled "Stupid Rules;" and abroad in Japan, Germany and England. We've diversified our operations into mail order, product manufacturing, book publishing and video production; and count amongst our clients such notables as mega star Diana Ross and the distinguished Senator from the State of Illinois, Carol Mosley Braun.

However, our success will always pale in comparison to the responsibility that lies ahead of us to continue this fight for economic liberty across the country where other budding entrepreneurs face the same problems. From our initial meeting with the Institute for Justice a mutual respect has developed between us, but more importantly a flood gate of understanding exactly what the issue of economic liberty is all about is embodied in the still unfolding success story of Cornrows & Co. That understanding needs to be passed on

to this committee and throughout the federal and local bureaucracy in order to free our country and its citizens to reach their highest potential.

Our small business / entrepreneurial problem here in America is that we have developed a false sense of capitalistic freedom. On the one hand we claim to be the capitol of the free world, the harbingers of the free enterprise system, where the free flow of ideas and the ways and means to implement those notions are at a premium; when in reality, we're a country of stringent rules and regulations and the crusher of dreams and aspirations. There is nothing free about our capitalism, our economics or our enterprise.

It was the free flow of ideas and the opportunity to take risk, to work on those ideas, that put this country ahead; that made us world leaders. But today, there is not a business or an invention that exists that would have been allowed to advance, grow and flourish if present day regulatory schemes were put in place back then. Could you imagine Thomas Edison or Lewis Latimer (inventors of the light bulb and carbon filament) being fined for unlicensed activity, or Granville T. Woods (holder of fifty patents in telegraph, telephone and railroad equipment) being placed before a judicial proceeding for operating a business out of his home; or Madame C.J. Walker (beauty and hair care pioneer) being arrested for operating a beauty salon without a license? You certainly can't imagine it then; the question is, why are we doing it now?

Why are we more determined now, than ever, to make it more and more difficult to allow the emergence of another Marriott Corporation or a Nordstrom's or a Hewlett-Packard or an Apple Computer, all bulging American enterprises started as what today would be recognized as illegal activity in most states.

Today, there is no free enterprise system, only enterprise. There is no freedom and there is certainly no system; only chaos, confusion, frustration, bewilderment and the infamous "red tape." As a matter of fact, our so-called Third World countries, presently show more tolerance for entrepreneurial freedom than we do.

We cannot, on the one hand, claim to be economically free, while on the other, refuse to give our citizenry the opportunity and the right to exercise on that freedom. Along with this freedom comes a sense of responsibility and trust. Everyday what we say to our American citizenry is that we don't trust you. Granted, laws show our civility, they show our sense of order and our respect for government and leadership. Regulations governing those laws only say to our citizenry that we can't trust you to follow the law as we've written it.

Licensing schemes, our local and federal governments' "cash cow," in many cases, knowingly participates in a "closed shop" mentality of unionized and non-union type activity by shutting out unlicensed individuals, preventing the emergence of anything that resembles what the present license holders will claim to be "unfair competition," and only demonstrates the license holders' ability to be able to pass a non-descript "standardized" test.

There is nothing within the license or regulatory scheme of any federal or local jurisdiction which can claim licensees are more proficient at their craft than non-licensees. In other words, there are bad, inefficient and pathetic electricians, plumbers, steam fitters, auto mechanics, barbers and hair dressers -- all licensed -- who go to work everyday, botching all but the

simplest of task, but they go to work, buy cars, boats and homes; send their kids to college, pay taxes and keep the government happy -- all for an annual licensing fee.

The food at a licensed restaurant doesn't taste any better because it is licensed and it's certainly not any cleaner based on a licensing criteria. But there are probably no fewer than four paid licenses required to open any sit-down restaurant in this country and that doesn't include licenses for alcohol or live entertainment. The same holds true for small corner grocery stores who must hold an occupancy permit, a business license, a certified food managers license, a cigarette license, a patent medicine license and a license for various classes of alcoholic beverages, only to mention a few.

Burdensome regulations are simply a means to justify the hiring of "government" workers, bloating the bureaucracy, running up the deficit, setting up little governments within the government, cloaked as a board or a commission, which are made up of practitioners within the governed industry to keep out the undesirables, (unlicensed practitioners), perpetuating the establishment of training schools, which the government licenses and regulates; then charges perpetual and escalating fees to an unsuspecting public who thinks their government has their best interests at heart because their motto is "we're doing it for you -- public health and safety."

Licensing and regulatory schemes have become a legitimized government racket disguised as small business entrepreneurship. Let's keep the natives happy; hire them all to do inconsequential work and make them think they've got a "good government" job.

The first thing I would recommend to this committee is to deregulate all trade industries. Make our free enterprise system free again. For those who want licenses, they would still be available; but you would have choices, just like a high school graduate deciding on their future: do I go to college to increase my chances for a better job?; or an employer deciding on his new employee: do I hire the college graduate or the experienced worker? You may or may not make the right decision, but rest assured, it will be your decision and not that of your government. Local and federal officials need to have more respect for the intelligence of the American public that they can decide whether they want a licensed or unlicensed mechanic.

Adoption of Clint Bolick's proposed Economic Civil Rights Act would be the first step in accomplishing this goal; mandating both federal and local jurisdictions to release their strangle hold on small business enterprise in America.

Further, I would set in place a mechanism for re-defining what a small business is. Presently, most local and federal jurisdictions consider a small business any business which grosses between three and eight million dollars. The rest of us I classify as "minuscule." What local and federal officials have done is to declassify these minuscule businesses as non consequential, expendable, simply an after thought. This is unacceptable.

Expansion and support of public and private entrepreneurial initiatives is a must. The incorporation of business practices and principles into the present school curriculum along with basic skills is imperative, with an emphasis on innovative projects which encourage creativity and thought, even if we don't understand it.

Establish public / private partnerships with emerging industries, tracking students for those positions at an early age. Grant tax incentives for any businesses that adopt an entire school district, a school or simply a class room or a student.

Finally, I would urge this committee to include us, the small business entrepreneur, in the process of government. We have no lobbyist, there's no one in government looking out for our interest. How many legislators or their staff / aids can claim to be from backgrounds remembered where the business household grossed less than a million dollars? When have you or they brought those struggles to mind when you were burdening the rest of us with some of the senseless legislation you allow to pass through these very halls everyday? How can you possibly begin to understand my plight when you've never talked to me or someone like me?; and I'm not referring to the friendly chat with the cab driver on your way to the airport; I'm referring to meaningful, substantive dialogue.

What I'm saying to this honorable chair and this committee is simply this; inviting us here to offer testimony as we've given today does not make me feel any better, nor am I disillusioned to think that this presentation makes me a part of the legislative process. I seriously wonder at times do legislators truly understand our plight if you don't hear from us constantly and consistently as other lobbying or interest groups until its too late. If I don't ask to represent myself, who will represent me?

I am available, as I'm sure others are, to lend you my expertise, my opinion and my position on past, present or pending legislation; to assist in the formation or review of that legislation (should it even be necessary) assuring that the interest of our free enterprise system is protected at all levels.

Thank you for your time and your consideration. I will respectfully address any questions or comments this committee may have of me.

Enlarging Opportunities for Women and Minorities in Construction: Deregulation versus Affirmative Action

by

Jeff Petersen
University of California at Berkeley

and Peter Philips
and Anne Yeagle
University of Utah

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Summary

Two schools of thought present opposing policies for expanding women and minority opportunities in the construction labor market. The deregulation school advocates eliminating prevailing wage laws which in turn will reduce the prevalence of unions and apprenticeship programs in construction. As contractors shift to a less skilled, labor intensive crew mix, the employment of women and minorities will expand. This will first be seen in entry level jobs. As employment shifts from apprentices to helpers the employment of women and minorities will increase.

The affirmative action school counters that opening up employment for women and minorities by destroying training, wages and working conditions defeats the purpose of seeking more jobs for women and minorities in construction. Vigorously enforced affirmative action policies can and have expanded training and employment opportunities for women and minorities without dismantling apprenticeship training or eroding good wages.

This research finds that:

(1) Construction incomes range between $15,000 to $35,000 depending on occupation;
(2) In the nonunion sector, there are approximately 3 women and/or minority workers for every 10 entry level helpers;
(3) In the union sector, there are approximately 2 women and/or minority workers for every 10 entry level apprentices;
(4) In construction there are 8 helpers for every 2 apprentices which roughly corresponds to the overall proportion of nonunion to union workers;
(5) Among apprentices, 82 percent have high school diplomas or more formal schooling while among helpers, 54 percent have high school diplomas or more formal schooling;
(6) Apprentices work approximately 50 percent more hours annually than do helpers and correspondingly apprentices experience half the unemployment rate of helpers;
(7) It is well known that apprentices receive more formal class room training and more systematic on-the-job training. This research shows that apprentices receive more hours of on-the-job training and more continuous training simply because they work more hours and more steadily. For instance, in 1989, women apprentices worked on average 1534 hours while women helpers worked 913 hours. Women apprentices reported an unemployment rate of 12 percent while women helpers reported an unemployment rate of 26 percent;
(8) Because they work more and learn more, apprentices earn more than helpers. For instance, in 1989 women apprentices earned on average $16,608 in 1995 dollars while women helpers earned on average $5,261.
(8) Affirmative action policies regulating apprenticeship programs have been effective for two decades. As early as the 1970s, union apprenticeship programs were enrolling around 20 percent minority workers. Smaller, nonunion apprenticeship programs which because they had fewer than 5 apprentices were not covered by affirmative action guidelines, enrolled around 10 percent

minority workers.

(9) Deregulation policies can be studied because nine states have repealed their prevailing wage laws since 1979. In these nine states, minority participation in apprenticeship programs has fallen. Minorities who were over-represented in apprenticeship programs relative to their state populations in these states became significantly under-represented in apprenticeship training after repeals.

(10) This paper concludes that enforced affirmative action policies promote access for women and minorities to high-skilled, high-wage jobs in construction while deregulation policies enlarge women and minority employment opportunities at the cost of reducing the training and remuneration of those jobs.

Note on Sources:

The majority of data for this report come from the 1990 U.S. Census of Population 5% Public Use Microdata Sample which are machine readable file containing a sample of individual long-form census records showing most population and housing characteristics but with identification information removed. These data are available to the public. For more information see U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, ***Census Catalogue and Guide***, 1993, p. 237 for specific PUMS citation and pp. 2-3 for ordering information.

Some data for this report come from unpublished reports of the U.S. Department of Labor, Bureau of Apprenticeship Training, (202) 219-5921

The Deregulation Argument:

There are two theories regarding the best way to enlarge upon the employment opportunities of women and minorities within the construction industry. The first school advocates deregulating the construction labor market. Primarily this entails elimination of prevailing wage laws which regulate the payment of wages on public works construction. Secondarily, this could entail relaxation of safety regulations and child labor laws. The deregulation school argues that particularly prevailing wage legislation induces crew mix strategies and training institutions which are adverse to the interests of women and minorities.

The deregulation school contends that prevailing wage laws encourage and promote unionization in construction. Prevailing wage regulations require that winning bidders on public works projects pay specified wages for individual occupations on the construction site. These wages are as much a specification of the construction to be done as are the quality of materials used or the nature of the project to be constructed.

Prevailing wages are, in principle, the market wage rate for each occupation employed on the construction site. Market rates are determined in advance by an assigned regulatory agency of either the federal, state, county or municipal government depending on the specific law being enforced. In the case of the Federal government, the county-by-county prevailing wage is determined by the U.S. Labor Department based upon wage and employment data on previous construction in each county provided by contractors and unions.

The deregulation school contends that in many cases the prevailing wage is the union wage. When the government is required to pay the union wage, then contractors will assemble crew mixes which correspond to the skills of relatively high-paid union construction workers. The deregulation school contends that this is adverse to the interests of women and minorities because if contractors are required to pay wage rates corresponding to skilled labor, then contractors will hire skilled labor. The deregulation school contends that women and minorities have been excluded from obtaining high skills in construction and consequently, when prevailing wage laws encourage the hiring of skilled labor, these laws discourage the hiring of women and minority construction workers (or would-be construction workers).

The heart of discrimination in construction, according to the deregulation school, is the apprenticeship program which provides entering construction workers with systematic on-the-job and formal training in a variety of construction trades. The deregulation school contends that collectively bargained and jointly administered union-management apprenticeship programs have discriminated against would-be women and minority construction workers. Consequently, there are a limited number of high-skilled women and minority construction workers. In short, prevailing wage laws encourage the employment of skilled workers in construction and this means white, male workers because (it is alleged) women and minorities have been excluded from union apprenticeship training.

The deregulation school earns its name because it claims that the solution to this alleged history and current pattern of discrimination is deregulation. With the elimination of labor market regulations in construction, labor unions will decline or disappear, collectively-bargained apprenticeship programs will disappear, in turn. Union apprenticeship training will be replaced by merit shop (i.e. open shop) training to the extent such training is required by the dictates of the

market. Crew mixes will shift towards more labor intensive and less skill intensive techniques. Apprentices will be replaced by helpers. (Helpers gain some on-the-job experience but do not receive either formal class room training nor formal rotation or oversight of on-the-job training). With the shift to less skilled workers and helpers, women and minorities will gain a greater share of construction labor market employment.

The Affirmative Action Argument.

The affirmative action school accepts the notion that women and minorities should have a greater share of employment in the construction industry. It notices that minorities are under-represented in construction employment at a reflection rate of roughly 70 percent. The minority reflection rate is the percent minorities in construction divided by the percent minorities in the population. Women are starkly under-represented in construction with a reflection rate of under 10 percent.

The affirmative action school also accepts the notion that explicit discrimination in apprenticeship selection is a historical fact. However, the affirmative action school argues that affirmative action regulations when vigorously enforced have been successful in overcoming discrimination in the apprenticeship selection process. The affirmative action school argues that affirmative action guidelines have successfully altered apprenticeship selection processes and clear patterns of discrimination currently exist only for under-sized, nonunion apprenticeship programs which are too small to be covered by affirmative action policies.

Furthermore, the reason women and minorities would want jobs in the construction industry is because these are reasonably well-paying jobs for people with a high school education (or less). Construction affords the opportunity not only for jobs but for training which leads to good jobs. The affirmative action school cautions that just like a medical operation is not a success if the patient dies, policies which open up jobs for women and minorities by destroying the attractiveness of those jobs cannot be called a success. Policies which open up jobs for women and minorities by making those jobs less secure, less safe and less remunerative defeat the purpose of obtaining more, attractive labor market opportunities for groups which have been the historical victims of discrimination.

The affirmative action school further argues that unions and collective bargaining arrangements provide useful tools to enforce affirmative action guidelines. For instance, currently affirmative action guidelines do not cover apprenticeship programs with less than five apprentices. Small apprenticeship programs are common in the nonunion segment of construction because single-employer programs are most common in the merit shop environment. Union programs are predominantly multi-employer programs which have larger numbers of apprentices which are easier to regulate. Furthermore, collective bargaining arrangements create formal procedures for recruitment and training within apprenticeship programs. Formal arrangements are easier to regulate. Thus, unions provide a useful handle to apply affirmative action pressures on the construction labor market.

Why Construction Employment is Attractive.

Those representing the interests of women and minorities advocate greater employment opportunities for these groups in construction because construction employment has historically provided middle-class incomes for people with limited formal training. Figure 1 shows annual income in 1989 (but denominated in 1995 dollars) for a selected set of occupations in construction. Within this group, the highest mean income was $32,438 for crane operators while the lowest income was $16,828 for roofers. Operating engineers earned, on average, $27,605 while painters earned $17,634. While minority painters and operators earned less than their white counterparts, the difference was not overwhelming. Figure 2 shows that white operators earned $27,938 while minority operators earned $24,862. Similarly, white painters earned $18,096 while minority painters earned $15,510. The gap between males and females among operators and painters was wider. Figure 3 shows that in 1989 (but denominated in 1995 dollars) male operators earned $27,710 while female operators earned only $22,043. Among painters, males earned $18,034 while females earned markedly less, $11,551. Despite these earnings differentials by race and sex, advocates of the interests of women and minorities view construction employment as attractive. Thus, expanding job opportunities for women and minorities in construction is deemed desirable.

Analyzing Entry into Construction.

Educational Background. Many people enter construction work through informal training. Formal training is limited to systems of helpers and apprentices and among helpers the training is limited. The occupation of helper is a common entry occupation in the nonunion environment and apprentices are a common entry point in the union environment. Figure 4 shows that in 1990 there were 4 helpers for every apprentice in construction work. This roughly corresponds to the overall ratio of union to nonunion workers in construction. Figure 5 shows that roughly 3 out of every ten helpers in 1990 were women and minorities while roughly 2 out of every ten apprentices were women and minority workers.

This is the key evidence that the deregulation school points to in advocating an expansion of nonunion construction employment. If more women and minorities are to be found in the entry level jobs in the nonunion sector, it suggests that an expansion of the nonunion sector would expand the jobs available to women and minorities. The affirmative action school responds, however, that because apprentices work more hours than helpers and earn more income, effective employment of women and minorities (hours times wage) is overestimated in the helper sector relative to the apprenticeship sector.

Helpers have substantially less formal education than do apprentices. Figure 5 shows that 82 percent of apprentices in 1990 had a high school education or better while only 54 percent of the construction helpers had received a high school degree or higher education. Figure 7 shows the percent distribution of education within each group, helpers and apprentices. More than 30 percent of apprentices had some college. Around 20 percent of helpers had some college. A

considerable proportion of helpers had very limited education. Figures 8 and 9 show that the educational distribution of minority and women differ with women being better educated than minorities and entering construction workers in general. However, the relative educational profiles within groups by helper and apprentice remain the same. Thus, the story that formally uneducated workers can enter construction and receive an old-fashioned education is something of a myth. Disproportionately, school drop-outs are channeled into the helper sector where training is inferior while high school graduates are more likely to enter apprenticeship training where systematic training is common.

Later we will see that the rewards to formal education are greater in the apprenticeship system than in the helper system. (See Table 1).

Hours of Work. Construction workers rarely work the 2080 hours which are considered a full year's work in manufacturing or the service sector. This is also true of entering construction workers. Figure 10 shows that among entering white construction workers, apprentices worked in 1989 roughly 50 percent more hours than did helpers. White and minority helpers worked basically the same number of hours, around 1100 and minority apprentices worked more hours than helpers but fewer hours than white apprentices. Hours of work for entering workers are important not only because more hours means more income but because more hours means more experience for helpers and more training for apprentices. Because the future income payoff of experience and training is high for entry level workers, the difference between the hours of helpers and apprentices has significant downstream effects.

Perhaps surprisingly, Figure 11 shows that among apprentices, the hours of work for men and women was essentially the same in 1989 with men working on average 1519 hours and women working slightly more at 1534 hours. In contrast, women helpers worked significantly less than did men helpers while all helpers worked substantially less compared to apprentices. The widest gap is between women apprentices who worked most at 1534 hours and women helpers who worked least at 913 hours. There are substantial downstream costs to women helpers from working substantially fewer hours and receiving informal rather than formal training during those shorter hours. As we shall see, the earnings of female helpers is very low. Some might presume that this low wage compensates the employer for training. But when women helpers work less than half a year, little training is taking place and the continuity of training is largely absent.

Unemployment Differences. Limited working hours which typify construction means that at any given time, the unemployment rate for construction workers will be much higher than the national average. However, differences between the unemployment rate of helpers and apprentices are driven by differences between training in the nonunion and union sectors of construction.

Figure 12 shows that among entering white construction workers, the unemployment rate for helpers in 1990 was twice that of apprentices. Unions regulate entry into apprenticeship programs so that the number of new trainees corresponds to the growth of the local construction economy and attrition from the ranks of experienced construction workers. In the nonunion sector no such supply regulation takes place and at any given time one out of every four to five helpers is out of work. This pervasive unemployment leads to a discontinuity of training which

combined with its informality substantially reduces the quality of the resulting skills acquired. Figure 13 shows a similar pattern by gender comparing unemployment rates for helpers and apprentices. Figure 13 shows a higher unemployment rate for minority apprentices compared to white apprentices which corresponds to the relatively fewer hours of work for minority apprentices compared to white apprentices shown in Figure 10. These hours and unemployment differentials lead affirmative action advocates to suggest that one focus of regulations should be to monitor the process whereby whites and nonwhites are allocated job/training opportunities. However, the difference in hours and unemployment between apprentices and helpers is more significant than the differences between white and nonwhite apprentices simply because the hours of helpers are the least of all and the unemployment of helpers is the greatest.

Income differences. With fewer work hours in a year, it is not surprising that helpers earn less than do apprentices. Figure 14 shows that in 1989 (but denominated in 1995 dollars) white helpers earned $9,303 while white apprentices earned over 50 percent more--$15,436. The earnings differential among minorities was less but still significant. Minority helpers earned roughly the same as white helpers at $9,224 while minority apprentices earned $13,520. Figure 15 shows that among females, women helpers earned a measly $5,261 while women apprentices earned three times as much at $16,608. Women are significantly under-represented in both union and nonunion entry level jobs, but women who are apprentices do as well as male apprentices and significantly better than female helpers.

Thus, apprentices worked more than helpers; they learned more than helpers and they earned more than helpers. This was true for women as well as men and for minorities as well as whites. However, the hours of work and consequently the earnings of minority apprentices was less than that for white apprentices.

Discrimination in income among entry level workers. Table 1 presents linear regression models of income for apprentices and helpers. In equation (1), the natural log of 1989 income denominated in 1995 dollars is a function of age, age squared, years of schooling, whether or not the worker was an apprentice (as opposed to helper), whether or not the worker was a minority (as opposed to white), and whether or not the worker was female. A constant is included in the model reflecting unmeasured effects on income. The adjusted R square is about 20 percent on these cross-sectional data. Statistical significance at the 1 percent level is denoted by an asterisk.

Age and age squared capture work experience and allow work experience to rise at a diminishing rate if age is positive and age squared is negative. The coefficients of these two variables are statistically significant at the 1 percent level and they have the anticipated sign. Together they imply that apprentices and helpers' incomes rise at a diminishing rate with experience. Years of schooling also raises the incomes of entry level workers. Being an apprentice, as opposed to a helper, raises an entry level worker's income significantly and substantially and being female lowers income. There is no measurable statistical effect on income of being a minority worker.

In models (2) and (3) we re-run model (1) for apprentices-only and helpers-only respectively. This means in models (2) and (3) we need to omit, of course, the variable for apprentices versus helpers because each model is run on only one type of entry-level worker. The age variable is statistically significant in both models but is larger for apprentices.

Apprentices' wages go up faster with age. Years of formal schooling is also significant for both apprentices and helpers but the effect of more formal schooling is larger for apprentices. Past success in formal schooling has a greater payoff in apprenticeship systems because in most apprenticeship programs additional formal schooling is required and provided. Helpers are not provided additional class room training and past success in formal schooling is less directly tied to the requirements helpers confront.

Being in a minority does not alter incomes in either the apprentice or helper environment but being female does lower incomes for helpers. There is no statistically significant lowering of income for female apprentices. Thus, to the extent there is gender discrimination in income determination among entry level construction workers it is among females in the nonunion environment. The constant or starting point in calculating income is greater for apprentices compared to helpers.

In short, these three models suggest that incomes for entry level construction workers goes up at a diminishing rate with increased experience and the experience effect is greater for apprentices compared to helpers. Income goes up with formal schooling and this effect is greater for apprentices. Apprentices start earning at a higher level than helpers. There is no clear evidence of discrimination in income determination among white and nonwhite apprentices, but females in the nonunion sector do experience discrimination.

Affirmative action policy in practice.

Affirmative action policy has been applied to construction apprenticeship programs for decades. Not only do we not find clear evidence of discrimination among apprentices from the 1990 ***Census of Population*** 5% Public Use Microdata Sample, but earlier U.S. Department of Labor, Bureau of Labor statistics data for apprenticeship programs also suggests that affirmative action policy has been effective since the late 1970s.

Table 2 compiles BAT data for all construction apprentices and minority apprentices and shows that as early as 1975, 19% of all jointly sponsored, union-management apprentices were minorities. In contrast, in 1975 only 9% of all apprentices in nonunion, nonjoint programs were minorities, less than half the rate of minority involvement that one found in the union apprenticeship environment. The rate of minority participation rose slightly in both the union and nonunion environment through the late 1970s. In both the union and nonunion programs, the relative graduation rate for minority apprentices was lower compared to the nonminority graduation rate. (The 1979 union datum here seems anomalous.)

This is not a comparison in Table 2 of apprentices to helpers but rather a comparison of union apprentices to nonunion apprentices. Each year union programs graduated a little less than 4000 minority apprentices in the late 1970s while the nonunion programs graduated a little less than 200. Thus the union apprenticeship programs generated 20 times the number of minority journeymen in construction compared to the nonunion apprenticeship programs. Given that the minority population in the United States in the 1970s was roughly 20 percent of the overall population, affirmative action policy seems to have been effective is inducing quality minority training in construction in the union environment. In the nonunion environment, affirmative action policy (or its absence) was failing in the 1970s.

The reason affirmative action policy was failing in the nonunion environment was because many of the nonunion apprenticeship programs had fewer than five apprentices. Affirmative action regulations do not cover programs with fewer than five apprentices. In Table 2, the number nonunion programs was more than twice the number of union programs but enrolled about one-sixth the number of apprentices. The average size of the nonunion program was 2.2 workers, well below the 5 apprentice threshold. The average size of the union program was 32.6 workers, well above the 5 apprentice threshold. Thus, the effect of affirmative action policy can be seen in the doubling of minority participation in covered programs.

Deregulation policy in practice.

Deregulation policies can also be studied in practice. Since 1979, 9 states have repealed their state prevailing wage laws. An additional 9 states never had prevailing wage laws at the state level. In the nine states which repealed their prevailing wage laws, minority participation rates in apprenticeship programs fell from 19.4 percent before repeals to 12.5 percent after repeals. Figure 16 translates minority participation rates into reflection rates. A reflection rate is the ratio of the minority participation rate in apprenticeship programs to the percent minority of the total state population. Figure 16 shows that in states which eventually repealed their state prevailing wage laws, prior to repeal, minorities were over-represented in those states' apprenticeship programs by 107 percent. After repeal, the minority reflection ratio fell to 85 percent. This change is similar to the standing difference in reflection percentages in 32 states which continue to retain their prevailing wage laws versus the 9 states which have never had prevailing state wage laws. Figure 16 shows that minorities in retaining states are slightly over-represented in apprenticeship programs while minorities in states which have never had prevailing wage laws are substantially under-represented in apprenticeship programs.

Summary.

Today, a host of labor market regulations are under attack. Prevailing wage laws, hours-of-work laws, child labor laws, convict labor laws, workers compensation laws, workers safety laws are all being considered for repeal or substantial weakening of their provisions and enforcement. These laws date from the Progressive Era and are many are almost one-hundred years old. Prevailing wage laws date from Kansas in 1891. In addition to these Progressive Era laws, New Deal laws governing collective bargaining and social security are also being considered for review, reform or elimination.

The construction labor market is the miner's canary when it comes to the effects of deregulation on the labor market. An unregulated labor market will easily slide into a casual, low-wage, low-skill, uninsured and volatile labor market. The construction labor market does not have the high capital-labor ratios and stable product markets which lead to stable employment relationships absent regulations and unions. As a deregulated construction labor market slides down to a low-wage, low-skill, low-security labor market, it is not surprising that this demolition would open up job opportunities for women and minorities. After all, low wage, low skill, low security jobs are the sorts of opportunities women and minorities are currently

being offered.

True advocates of the interests of women and minorities want women and minorities to become apprentices, not helpers. They want women and minorities to get training not menial work. They want the training to lead to skills which will justify good incomes with pensions and health benefits. In short, true advocates of the interests of women and minorities are not be interested in false opportunities, where jobs become available simply because working conditions have deteriorated and no one else is any longer interested in them.

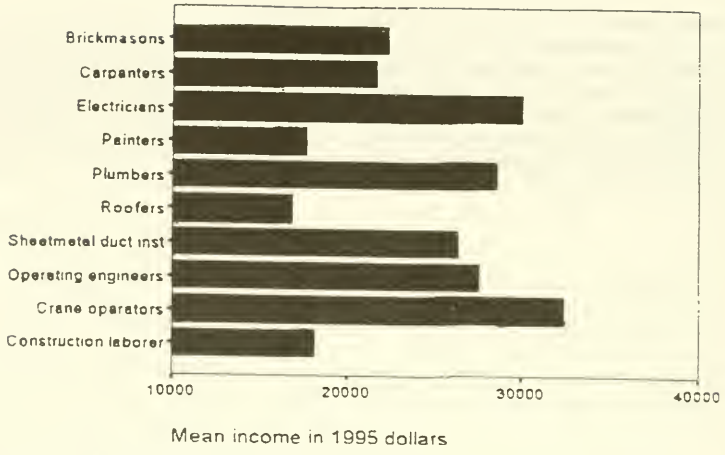

Figure 1: Mean 1989 annual income of selected construction occupations in 1995 dollars
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

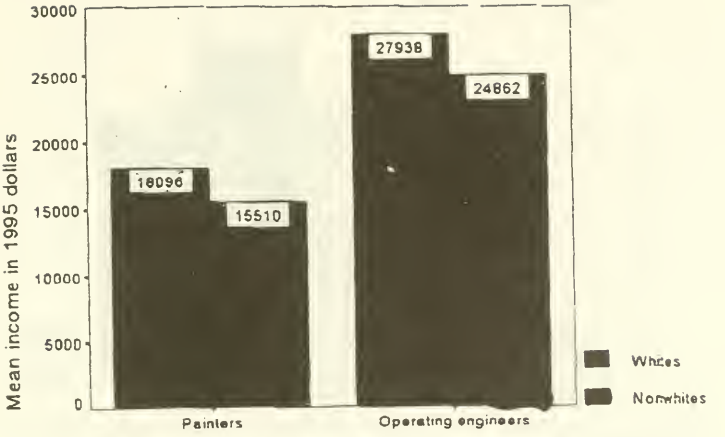

Figure 2: Mean income of painters and operating engineers by white and nonwhite workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Sample

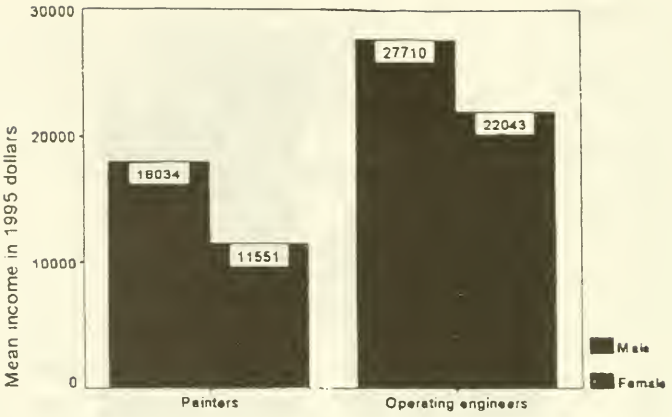

Figure 3: Mean 1989 annual income (in 1995 dollars) of painters and operating engineers by male and female workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

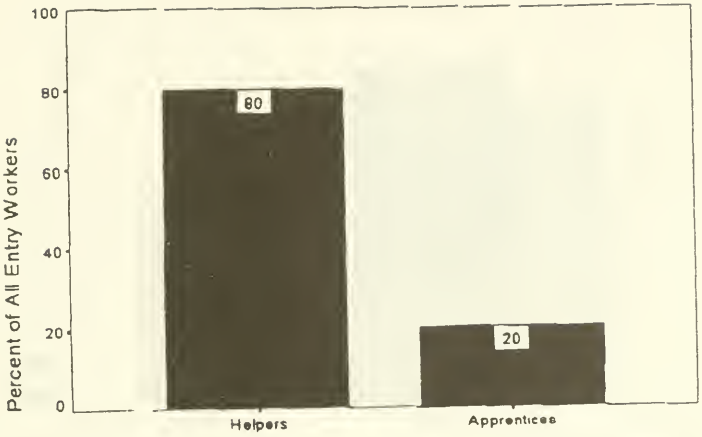

Figure 4: Percentage of helpers and apprentices among all new construction workers
Source: 1990 *Census of Population*, 5% Public Use Microdata Sample.

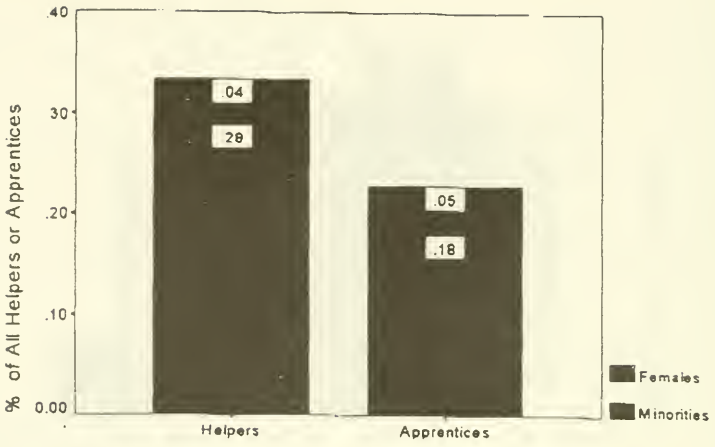

Figure 5: Females and minorities as a percent of all helpers or all apprentices
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

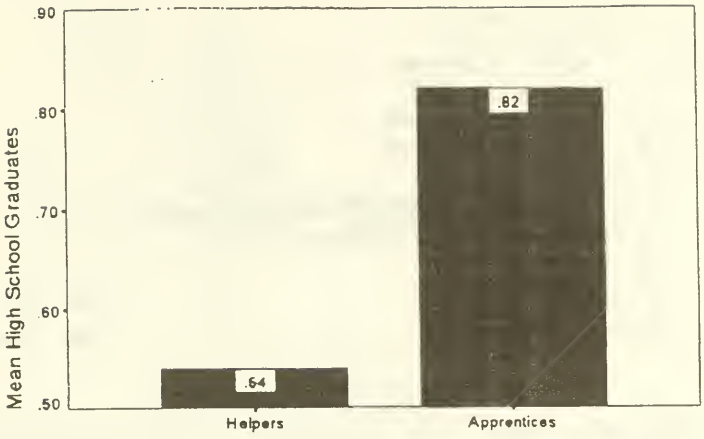

Figure 6: High school graduates (or higher) as a percent of all helpers or apprentices, 1990
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

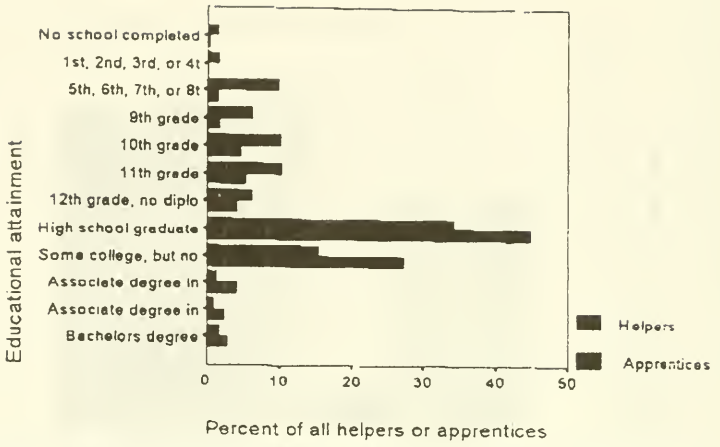

Figure 7: Percent distribution of educational attainment of all helpers or apprentices, 1990
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

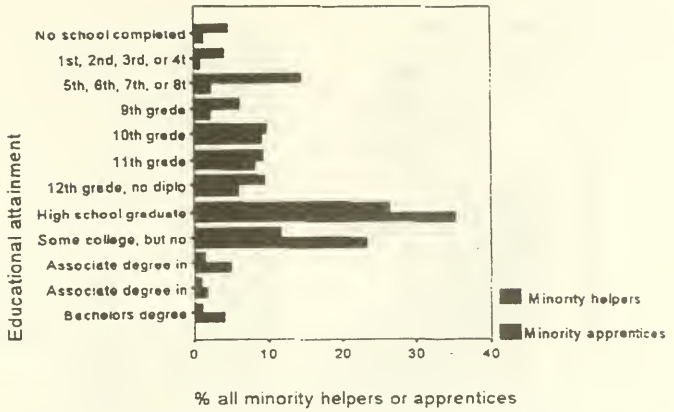

Figure 8: Percent distribution of educational attainment of minority helpers or apprentices, 1990

Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

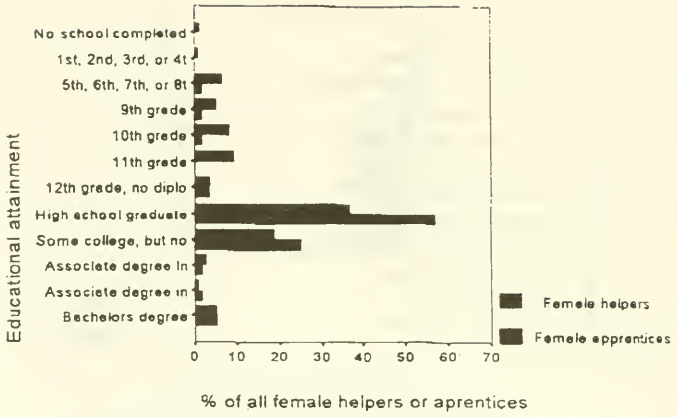

Figure 9: Percent distribution of educational attainment of female helpers or apprentices, 1990

Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

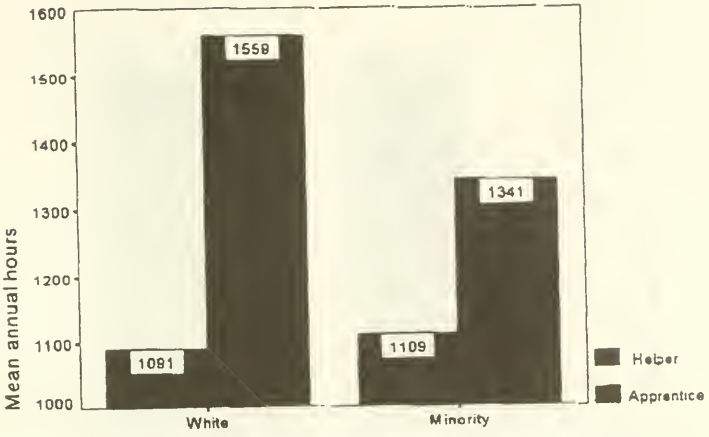

Figure 10: Mean annual hours of helpers and apprentices by white and minority groups
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

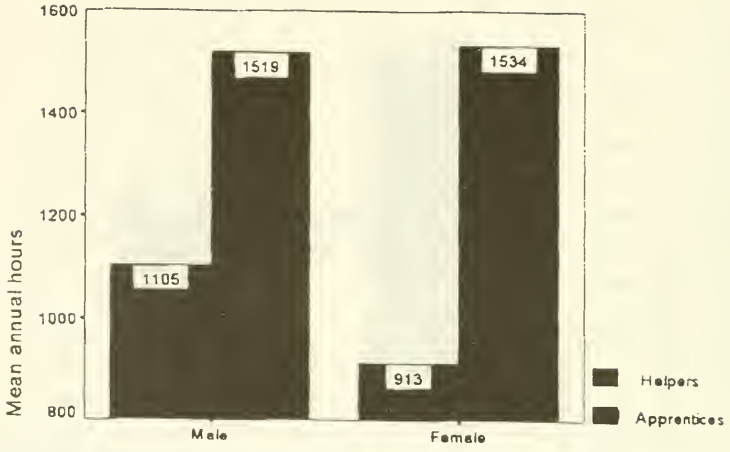

Figure 11: Annual hours of work for helpers and apprentices by male and female workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

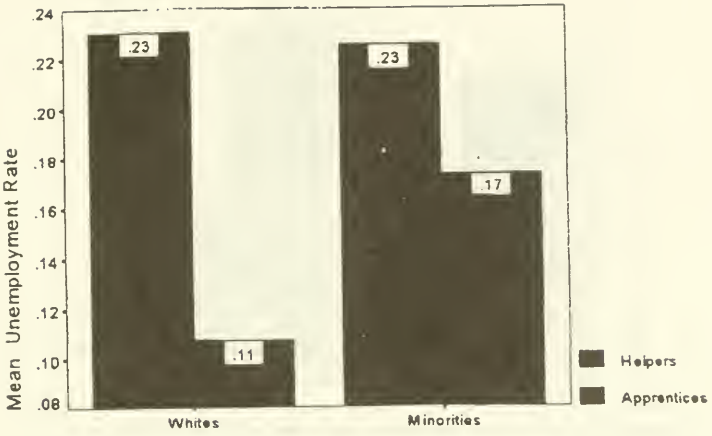

Figure 12: Unemployment rate of helpers and apprentices by white and minority workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

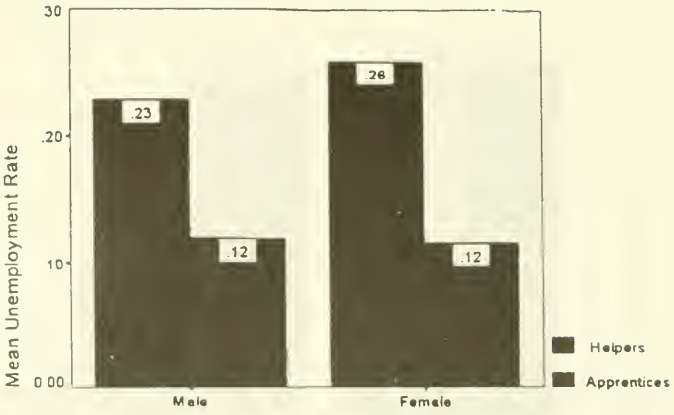

Figure 13: Unemployment rate for helpers and apprentices by male and female workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

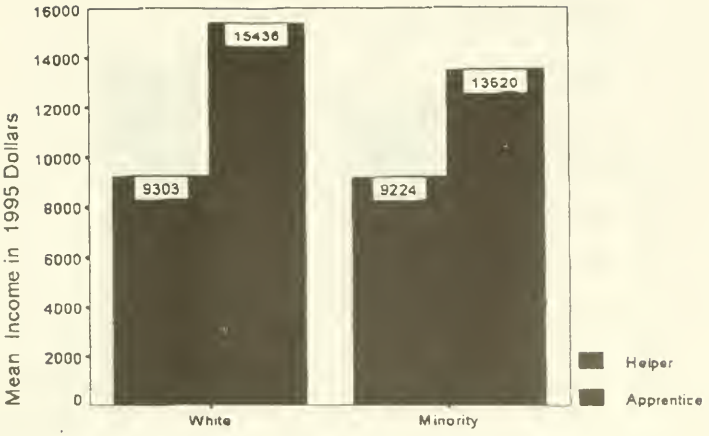

Figure 14: Annual income of helpers and apprentices by white and minority workers
Source: U.S. 1990 *Census of Population*, 5% Public Use Microdata Sample

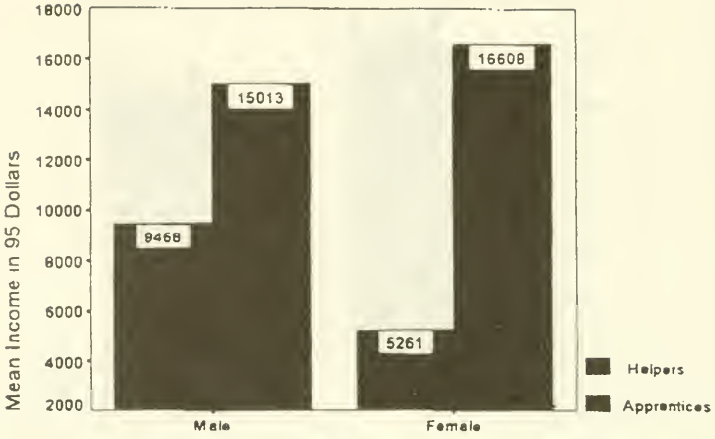

Figure 15: Mean annual income of helpers and apprentices by male and female workers
Source: U.S. *Census of Population*, 5% Public Use Microdata Sample

	ALL	APPRENTICES ONLY	HELPERS ONLY
	(1)	(2)	(3)
AGE	0.155*	0.170*	0.156*
AGE SQUARED	-0.002*	-0.002*	-0.002*
YEAR OF SCHOOL	0.045*	0.078*	0.041*
APPRENTICE	0.590*		
MINORITY	0.000	-0.001	0.000
FEMALE	-0.232*	-0.050	-0.296*
(Constant)	5.632*	5.819*	5.636*
Adjusted R Square	0.195	0.168	0.160

Table 1: Minority Training in Union and Nonunion Construction Apprenticeship Programs, to 1979.

	1975	1976	1977	1978	1979	5-Yr Avg
Jointly Sponsored Union-Mgt.						
No. Programs	3,931	3,941	3,921	3,952	4,032	3,955
No. Apprentices	118,275	117,849	120,621	135,282	153,575	129,120
No. Apprentices completed	22,698	24,377	26,217	24,530	19,724	23,509
No. Minority Apprentices	22,836	24,431	25,208	28,398	30,486	26,272
No. Minority Apps. completed	3,071	3,777	4,305	4,047	3,844	3,809
Minority as a % of All App.	19%	21%	21%	21%	20%	20%
Relative Completion Rate	65%	70%	74%	74%	98%	76%
Non-Joint Programs.						
No. Programs	8,609	8,736	9,348	10,230	10,744	9,533
No. Apprentices	19,488	18,212	19,597	22,003	24,641	20,788
No. Apprentices completed	1,837	2,313	2,342	2,092	1,964	2,110
No. Minority Apprentices	1,799	1,812	2,163	2,569	2,881	2,245
No. Minority Apps. completed	128	162	196	194	171	170
Minority as a % of All App.	9%	10%	11%	12%	12%	11%
Relative Completion Rate	74%	66%	74%	77%	72%	72%

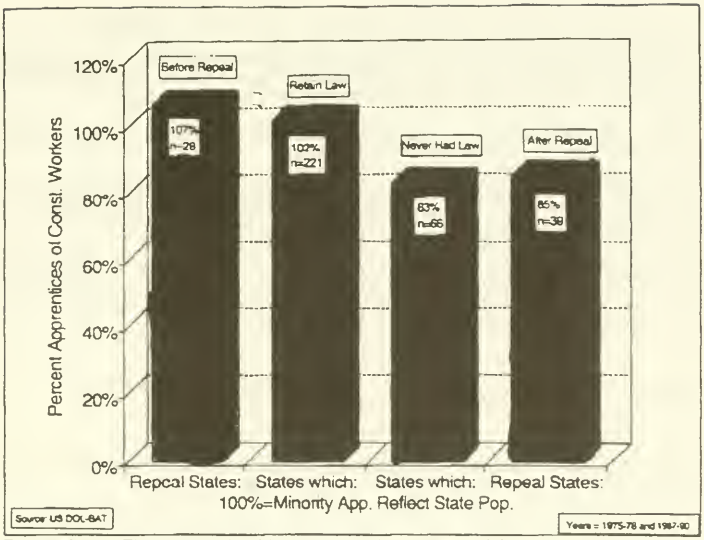

Figure 16: The percent minorities in construction as a ratio of the percent minorities in the state population by state groups.

Source: U.S. Department of Labor, BLS and BAT.

Minority participation in construction apprenticeships mirrored the state population in both repeal states prior to repeal and states which retained their prevailing wage laws throughout the period. However, after their several repeals, minority participation in apprenticeships in repeal states fell to levels which seriously under-represented minorities and resembled the under-representation characteristic of states which never had prevailing wage laws. Nonunion apprenticeship programs tend to be small and do not come within the oversight of affirmative action guidelines. This is probably why the various repeals have led to an under-representation of minorities in apprenticeships.

70. U.S. Bureau of the Census, 1970 *Census of Population*.

71. Figures 3.7 and 3.8 include all states for which any data are available, except California, Delaware, the District of Columbia, Hawaii, and Rhode Island — for which there are no Bureau of Apprenticeship Training data for the second period. We exclude these states and the District of Columbia (for the same reason).

12. We do not know what accounts for the unusually high training rate for "never-had" states in 1976. This anomaly disappears when average training rates by decades are compared.

73. This transformation into the log odds ratio meets the normality assumptions of linear regression analysis. The technique used is generalized least-squares regression, with the regression weighted by the square root of (percent trained) times (one minus percent trained) times (state employment).

74. Latent illnesses resulting from exposure to toxic materials are responsible for an uncounted and thus undetermined additional number of injuries and illnesses — the costs of which are borne as reduced productivity, ruined lives for workers and their families, and burdens on workers' compensation and other social security systems. For a mix of reasons, there are no reliable estimates on the number of such illnesses.

75. C.Culver, M. Marshall, and C.Connolly, *Construction Accidents: The Workers' Compensation Data Base, 1985-1988*, Washington, DC, OSHA Office of Construction Engineering. 1992

76. In figure 4.1, *n* refers to the number of observations in each state-law category. For instance, there were 230 state-year combinations for states that had prevailing wage laws throughout the period.

77. In the case of lost workdays per injury, the reported result is of the expected sign, but not statistically significant.

78. Jimmie Hinze, *Indirect Costs of Construction Accidents*, Seattle: The University of Washington, 1992, 14.

79. Because of small numbers, there are no reliable estimates on how repeal would affect death rates. Thus, we cannot calculate the projected increase in fatalities due to repeal. If, however, they were to be affected at the same magnitude as are injuries, we would expect an increase of 130 to 150 fatalities per year.

80. Utah, Department of Transportation, "Final Estimates Processed for Payments, 1970-74 data published in 1985 and 1994 reports.

81. The savings are so small because labor costs on public works are only roughly 25 percent of total costs. If you cut those labor costs by 10 percent, you have cut total costs by only 2.5 percent.

82. George F. Will, "It's time to repeal the Davis-Bacon Act", *Deseret News*, February 5, 1995.

83 Charles Culver, Michael Marshall, and Constance Connolly, *Construction Accidents: The Workers' Compensation Data Base, 1985-1988*. Office of Construction and Engineering, OSHA, 1992.

Losing Ground: Lessons from the Repeal of Nine "Little Davis-Bacon" Acts

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This is a working paper of the Economics Department of the University of Utah. Inquiries, comments, criticisms and suggestions should be directed to:

Peter Philips
Professor
Economics Department
University of Utah
Salt Lake City, Utah 84112
TEL 801 585-6465
FAX 801 585-5649
INTERNET PHILIPS@ECON.SBS.UTAH.EDU

The authors welcome your comments.

This working paper will be periodically updated as our research progresses. Updated electronic versions of this working paper are available from the anonymous ftp site at the Economics Department of the University of Utah. Internet users may use ftp (file transfer protocol) commands to obtain an updated version. The file is in Wordperfect 5.1 with extended postscript attachments. It may be printed out in Wordperfect 5.1 or 5.2 on any postscript laser printer. To obtain an electronic copy do the following:
(1) log on to an internet terminal; (2) at the prompt type ftp keynes.econ.utah.edu ; (3) at the request for user name type anonymous ; (4) at the password request type you e-mail internet address; (5) once you have entered the University of Utah Economics Department ftp site type cd tmp [then return] then type binary ; (6) then type ls to obtain a listing of the files in the ftp site. The file you are looking for is called DAVISBAC (7) Type get davisbac c:\davisbac.my where the second phrase c:\davisbac.my refers to the drive you want the file to go to and the name you wish the file to have.

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Executive Summary

Like the 1931 federal Davis-Bacon Act, legislation in 41 states has required that the "prevailing" wage be paid on state-government-funded construction projects. From 1979 to 1988, however, nine states have repealed their prevailing wage laws. (Nine states never had such a law.) The remaining 32 states have retained prevailing wages. These variations in state experience provide useful information with which to consider probable effects of additional state repeals or the proposed repeal of Davis-Bacon. This study found that state repeals of prevailing wage laws had several effects.

First, in Utah, whose experience was examined most closely, the state budget has not benefited from repeal of the prevailing wage law. The repeal helped drive down construction earnings and the state has lost substantial income tax and sales tax revenues. In the decade before the 1981 repeal in Utah, construction worker earnings averaged about 125 percent of average non-agricultural earnings. By 1993, construction worker earnings had fallen to 103 percent of the average earnings for Utah workers. This decline in earnings is because of lower wages, but also because of a subsequent shift to a less-skilled construction labor force.

Second, also in Utah, the size of total cost overruns on state road construction has tripled in the decade since repeal in comparison to the previous decade. The shift to a less-skilled labor force — lowering labor productivity along with wages — and the greater frequency of cost overruns have lessened any possible savings in public works construction costs associated with the repeal.

Third, looking at all the states, and controlling for a general downward trend in real construction earnings, variations in state unemployment rates, and regional differences in wages, repeals have cost construction workers in the nine states at least $1,477 per year in earnings, on average (in 1994 dollars). The costs may eventually be higher as the effects of the more recent repeals mature, driving wages and training down further.

Fourth, controlling for a general downward trend in the amount of construction training, variations in state unemployment rates, and regional differences in training availability, the nine state repeals have reduced construction training in those states by 40 percent.

Fifth, minority representation in construction training programs has fallen even faster than have the training programs in repeal states. Until the various state repeals, minority apprenticeship participation mirrored the minority percentage of each state's population. After repeal, minorities became significantly under-represented in construction apprenticeship programs.

Sixth, occupational injuries in construction rose by 15 percent where state prevailing wage laws were repealed.

Based on these findings, we conclude that, if the federal Davis-Bacon Act were repealed:

- *Federal income tax collections would fall by at least $1 billion per year* in real terms every year for the foreseeable future. This is because construction wage levels would decline across all states and — based on the experience of the nine repeal states — construction employment levels would not rise enough to offset this revenue loss. The figure for lost tax revenues may well be higher. If the experience of the nine states that never had a prevailing wage law is

indicative, lost tax revenues from a repeal of Davis-Bacon could rise to $2 billion per year. Whether the losses are $1 billion or $2 billion, the government cannot count on making them up with its cost savings as a purchaser of construction. *The government will not break even.*

- *There would be 76,000 additional workplace injuries in construction annually, with 30,000 of them serious and thus requiring time off from work to recover.* As a result, more than 675,000 work days would be lost each year in construction. This could lead to additional workers' compensation costs of about $3 billion per year, of which $300 million would be passed on to the federal government as increased costs on public works.

- *Utah's experience suggests that repeal of Davis-Bacon would generate a period of significant cost overruns and the increased use of expensive change orders.* Although we cannot measure the exact costs of such practices, it is generally accepted that change orders add substantially to construction costs.

The Authors

Garth Mangum (PhD, Harvard University, 1960) is Max McGraw Professor of Economics and Management at the University of Utah. He is author or coauthor of 30 books and numerous monographs and articles on labor and employment, including *Capital and Labor in American Copper, The Operating Engineers: Economic History of a Trade Union,* and *Labor Struggles in the Post Office and Union Resilience in Troubled Times: the Story of the Operating Engineers 1960-1993.* In addition to teaching at several universities and serving as an arbitrator in more than 600 labor disputes, he has served the federal government as senior research analyst of the Presidential Railroad Commission, research director of the Senate subcommittee on employment and manpower, and executive secretary of the National Commission on Technology, Automation and Economic Progress.

Peter Philips (PhD, Stanford University, 1980) is a Professor of Economics at the University of Utah. He is co-editor of *Three Worlds of Labor Economics* and coauthor of the forthcoming *Building Retirement Security: the Central Pension Fund of the Operating Engineers.* Philips has published widely on the canning and construction industries in journals such as *Industrial and Labor Relation Review, Industrial Relations, Business History,* the *Journal of Economic History,* and the *Cambridge Journal of Economics.* Philips has received awards for his teaching, including University of Utah Public Service Professor and Presidential Teaching Scholar.

Norm Waitzman (PhD, American University, 1988) is an Assistant Professor of Economics at the University of Utah and the co-author of *Business War on the Law: An Analysis of the Benefits of Federal Health and Safety Law Enforcement* and *The Incidence and Costs of Birth Defects: The Value of Prevention.* Waitzman's work on the economics of safety and health appears in the *American Journal of Public Health, Demography, Inquiry,* and the *Economic Forum.* He is writing a book, to be called *Physician Supply and Public Policy.*

Anne Yeagle is a PhD candidate at the University of Utah who is writing her dissertation on the effects of the 1981 repeal of Utah's prevailing wage law.

I. The History of Prevailing Wage Laws in the United States

In February 1891, Samuel Gompers, president of the American Federation of Labor, visited Topeka, Kansas, to speak on what the local newspaper called "the great topic of labor." Ten years earlier, the AFL — at its own creation — had laid out legislative aims that included the eight-hour work day, the elimination of child labor, free public schooling, compulsory schooling laws, the elimination of convict labor, and prevailing wages on public works. These proposals were based on a belief that the American labor market should consist of highly skilled workers earning decent wages, with time for family, and with children free to earn an education. In pursuit of these aims, Gompers' political strategy in Kansas allied him with the Republican Party.

On the morning of Gompers's arrival, the Alliance Party, known to history as the Populist Party, withdrew an earlier invitation for him to speak in the hall of the state House of Representatives, which the party controlled. Gompers, who represented 900,000 workers, had fallen out of favor with the populists, reportedly because of his belief that the trade unions should not form a political party with the Alliance.[1] The Republicans, who controlled the Kansas Senate, invited Gompers to speak there, and he did.

Gompers was in Kansas to focus on the eight-hour day. Like other Americans, Kansans in 1891 typically worked six days per week, ten to twelve hours per day. In the older trades and crafts, such as carriage making and saddle making, where the work pace was slow and under the workers' direction, the long work day was tolerable. In the newer factories producing shoes, textiles, and the like; in the mines; and in the urban putting-out systems in needlework, six-day weeks and twelve-hour days were grueling. The AFL had made its prime objective a shortened work day and work week with as little cut in pay as possible. In his Topeka speech, Gompers declared:

> Our banner floats high to the breeze and on that banner float is inscribed, "Eight hours work, eight hours rest and eight hours for mental and moral improvement."[2]

At that time, when there were no income supplement programs for the poor, low-income parents worked *and* had to send their children to work to make ends meet. This practice was later referred to by a North Carolina newspaper editor as "eating the seed corn." Each generation of poor condemned its offspring to poverty because the children grew up as illiterate as their parents. The prevalence of cheap child labor, which accounted for 5 percent of the manufacturing labor force in 1890 and a larger proportion of service sector workers, kept wages down and forced adult workers to put in the long hours to make ends meet. Gompers wanted regulation to force employers and the poor to adopt a strategy, however painful in the short run, of a high-wage, high-skilled growth path where children were in school and workers had the skills to justify wages that would allow for a family life. Gompers said,

> The Federation endorses the total abolition of child labor under 14 years of age; an eight hour law for all laborers and mechanics employed by the government directly through contractors engaged on public work, and its rigid enforcement; protection of life and limb of workmen employed in factories, shops and mines; ...the extension of suffrage as well as equal work for equal pay to women....The Federation favors measures, not parties.[3]

Although it was not clear at the time whether government could require private sector employers to honor the eight-hour day, government could set an example, Gompers believed. In state after state, he pleaded for the eight-hour day for government workers and private sector workers employed on public works. Gompers also pleaded for workers to be paid the "current" daily wage so they could afford the reduced work time. Government was being asked to set a good example for the private sector, to show that a refreshed labor force could produce in eight hours what a fatigued and bedraggled labor force turned out in ten or twelve hours. The prevailing wage law in its infancy was an attempt to obtain shorter working hours for *all* labor. The AFL paid attention to public works, however, because government at all levels was a major purchaser of construction. The AFL said government should not try to save money by eroding the wages of its citizens.

With similar logic, the AFL called for an end to convict labor. Many states employed convicts to pay for their keep. Convicts built roads on chain gangs, operated farms, made textiles, and sewed garments. Convict-made goods were sold, forcing down prices and the wages of working free citizens.

Thus, prevailing wage law legislation, at its birth, was embedded in an overarching intent to shorten the grueling working day for all labor, to compel the working poor to make ends meet in some fashion other than by sending their children into the factories, to compel children into schools so that they might become better workers and better citizens, to compel employers to adopt techniques that profited on the employment of skilled adult workers rather than unskilled child labor, to present government as an exemplar of good management by establishing the eight-hour day in government employment and on public works, and to abolish the practice of government saving tax dollars by grinding down wages on public works or through convict labor.

It is not surprising, then, that the first prevailing wage law passed in the United States — in Kansas — was part of an eight-hour-day law.

Passage of State Prevailing Wage Laws

The Kansas Eight-Hour law. Kansas established the first prevailing wage law in 1891. In January 1890, the Kansas Bureau of Labor and Industry Statistics, in preparation for its Sixth Annual Report, distributed a questionnaire to each trade union and the Knights of Labor Assembly. In response to a question about needed legislation, the Molder's Union of Parsons, Kansas, replied, "a law...against the letting of contracts for State work to unfair employers."[4] This plea for the state to let out contracts fairly appears to be one of the first reports leading up to the enactment of a prevailing wage law.

In February 1891, the Second Annual Convention of the Kansas State Federation of Labor, in Topeka, approved a bill concerning state-paid wages. That month, the bill, which included the prevailing wage section, called "for an Eight Hour Law" and was brought forth by Mr. Avery of the Typographical Union No.121, Topeka. The bill stated,

> That in no case shall any officer, board, or commission, doing or performing any service or furnishing any supplies to the State of Kansas under the provisions of the act be allowed to reduce the daily wages paid to employees engaged with him (or them) in performing such service or furnishing such supplies, on account of the reduction of hours provided for in the act.

> That in all cases such daily wages shall remain at the minimum rate which was in such cases paid and received prior to the passage of the act.[5]

The eight-hour bill was one of four labor-related bills pending in the legislature. The weekly pay bill, the child-labor bill, and the bill to make the first Monday in September a holiday, which would become known as Labor Day. In addition, that year the Kansas State Federation of Labor approved a resolution calling "for the abolition of convict labor when in competition with free labor."[6]

The eight-hour bill, Senate Bill 151, failed in the Kansas senate March 6, 1891, with the prevailing wage section removed. But by March 10, when the prevailing wage section was put back in, the bill became law. This first prevailing wage law stated,

> That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics and other persons so employed by or on behalf of the state of Kansas....[7]

At first, however, the law was not enforced.[8] Not until 1900, did the Kansas Bureau of Labor and Industry Statistics report enforcement: "there were hundreds of complaints that were attended to by correspondence, and good results obtained."[9].

Prevailing wage laws in other states. New York was the second state to pass a prevailing wage law. New York's eight-hour law (Chapter 385) was amended in 1894 by Chapter 622 to include a prevailing wage law for those employed on public works. As in Kansas, however, there were many violations.[10] Laws similar to those in Kansas and New York were passed in Oklahoma (1909), Idaho (1911), Arizona (1912), New Jersey (1913), Massachusetts (1914), and Nebraska (1923) (see table 1.1). These laws established a precedent for the creation of the federal Davis-Bacon prevailing wage law.

Passage of The Davis-Bacon Act

Three federal laws primarily affect prevailing wages in the United States: the Davis-Bacon Act of 1931 which applies to construction, the Walsh-Healey Public Contracts Act of 1936 which covers employers in manufacturing and supply industries, and the Service Contract Act of 1965 (known as the O'Hara-McNamara Service Act), covering suppliers of personal and business services. These laws attempt to neutralize the effects of government purchases on wage determination in the private sector. The Davis-Bacon Act is the most significant of the three laws.

A prevailing wage is intended to prevent the federal government from affecting local wages and construction conditions; Davis-Bacon disallows the government from pushing down wages in competitive bidding. The government has always been a major purchaser of construction services. As a primary customer of construction services, the government holds the potential to use its bargaining power to force down wage rates.

Table 1.1 Prevailing Wage Laws, by State

States having prevailing wage laws	Year passed	States without prevailing wage laws		
Alaska	1931	Georgia		
Arkansas	1955	Iowa		
California	1931	Mississippi		
Connecticut	1935	North Carolina		
Delaware	1962	North Dakota		
District of Columbia	1931	South Carolina		
Hawaii	1955	South Dakota		
Illinois	1931	Vermont		
Indiana	1935	Virginia		
Kentucky	1940			
Maine	1933			
Maryland	1945			
Massachusetts	1914	States that repealed prevailing wage laws	Year passed	Year of repeal
Michigan	1965			
Minnesota	1973			
Missouri	1957			
Montana	1931	Alabama	1941	1980
Nebraska	1923	Arizona	1912	1984
Nevada	1937	Colorado	1933	1985
New Jersey	1913	Florida	1933	1979
New Mexico	1937	Idaho	1911	1985
New York	1894	Kansas	1891	1987
Ohio	1931	Louisiana	1968	1988
Oklahoma	1909	New Hampshire	1941	1985
Oregon	1959	Utah	1933	1981
Pennsylvania	1961			
Rhode Island	1935			
Tennessee	1953			
Texas	1933			
Washington	1945			
West Virginia	1933			
Wisconsin	1931			
Wyoming	1967			

Note: The District of Columbia is listed here, but not included in the count of states.
Source: State laws and corrected version of Armand J. Thieblot, Jr., *Prevailing Wage Legislation: The Davis-Bacon Act, State Little Davis-Bacon Acts," The Walsh-Healey Act, and The Service Contract Act.* Philadelphia: The Wharton School, 1986, p.140.

For four years before the 1931 passage of the Davis-Bacon Act, 14 bills were introduced in Congress to establish prevailing wages in construction. Robert L. Bacon in 1927 introduced the first bill proposing a prevailing wage for construction, H.R. 17069. The member of Congress justified his measure as follows:

91-562 O - 96 - 6

> The Government is engaged in building in my district a Veteran's Bureau hospital. Bids were asked for. Several New York contractors bid, and in their bids, of course, they had to take into consideration the high labor standards prevailing in the State of New York...The bid, however, was let to a firm from Alabama who had brought some thousand non-union laborers from Alabama into Long Island, N.Y.; into my district. They were herded onto this job, they were housed in shacks, they were paid a very low wage, and the work proceeded...It seemed to me that the federal Government should not engage in construction work in any state and undermine the labor conditions and the labor wages paid in that State...The least the federal Government can do is comply with the local standards of wages and labor prevailing in the locality where the building construction is to take place.[11]

Hearings for a federal prevailing wage law began in 1927 and continued in 1928 and 1930, but no bill was passed. On March 3, 1931, Bacon's original proposal, which he had reintroduced as H.R. 16619, was signed into law by President Hoover.[12]

The Davis-Bacon Act required payment of prevailing wages on federally financed construction projects. The law essentially ruled out bidding on construction worker wages on federally financed construction. The original language was vague, however, and prevailing wages generally were not determined before the acceptance of bids. In 1935, President Roosevelt signed clarifying amendments to the act, which became the basis of the current Davis-Bacon Act. The National Labor Relations Act of 1935 gave the Secretary of Labor authority to set the prevailing wage.

In 1935, Roosevelt's Secretary of Labor, Francis Perkins, established the original rules for determining the Davis-Bacon prevailing rates. The prevailing wage was said to be the wage paid to the majority, if a majority existed; if not, the 30-percent rule was used. The 30-percent rule means if 30 percent of the workers in an area are paid the same rate, that rate becomes the prevailing rate there. The 30-percent rule often resulted in the union wage being the prevailing wage. If the 30-percent rule did not apply, because at least 30 percent of the workers in a given occupation in the local labor market did not receive the same wage rate, the average wage rate was paid to workers doing the same job. The prevailing wage was determined this way for 50 years.

In 1985, President Reagan changed administration of Davis-Bacon, creating the 50-percent rule. The revised regulation reduces the influence of the negotiated union wage in most areas (see page 9, below).

The Tenth Amendment to the Constitution restricts the ability of the federal government to dictate contract terms for the states. Thus, work funded entirely by state or local governments is not covered by Davis-Bacon. Each state, county, or city can establish its own prevailing wage — if it chooses to do so — through legislation. In 1994, 29 percent of all county-level federal Davis-Bacon prevailing wage rates were taken from union contracts, 48 percent used average wages, and the remaining 23 percent of counties used a mix of union and average wages, depending on the occupation.

Repeals of Some State Prevailing Wage Laws

Kansas had passed the first prevailing wage law in 1891 and, by 1969, 41 states and the District of Columbia had prevailing wage laws. Several cities also passed local prevailing wage laws affecting construction. However, state governments began experiencing fiscal crises in the late 1970s. In 1978, California voters passed Proposition 13, restricting state expenditures, and the Labor Law Reform Bill failed in Congress. In this political context, many state legislatures believed that, to save tax dollars, government should use its bargaining power to lower construction costs, even if the probable effect of this action would be the lowering of construction wage rates and a possible effect might be the lowering of quality in the construction industry.

More than 51 bills have been introduced in 23 state legislatures to repeal or curtail so-called little Davis-Bacon l[illegible][13] Alabama, Arizona, Colorado, Florida, Idaho, New Hampshire, Kansas, Louisiana, [illegible]n have repealed their prevailing wage laws.

Florida. Florid[illegible] which passed its prevailing wage law in 1933, was the first state to repeal. The statute was repealed over the veto of the governor in 1979.[14] One of the most populous counties, Broward, established its own local prevailing wage law and several cities in Broward passed similar laws.[15]

Alabama. Alabama was the next state to repeal, in 1980.[16] After Alabama's repeal, the entire South from Virginia to Mississippi, except Tennessee, was without state prevailing wage law. Unsuccessful attempts were made in 1983 and 1984 to reinstate the 1968 Alabama laws. However, prevailing wage laws exist at the local level, such as one in Mobile for city-sponsored construction.[17]

Utah. Utah's prevailing wage law had been passed in 1933. Eventually, prevailing rates were set by hearings held in three districts that were created for this purpose. In addition to covering construction, the Utah statute established prevailing rates for piece work.

The first indications of intent to repeal the Utah law were heard from the local chapter of the national Association of Building Contractors (ABC) in 1978. (The ABC, nationally and in Utah, sought to represent the interests of non-union contractors.) The Utah ABC outlined its strategy in a letter to other state ABC chapters in 1978:

> It is our hope that the major argument in favor of repeal would be based on tax savings and unnecessary government spending, rather than a union verses non-union argument.[18]

The ABC lobbying effort became public during the Utah legislative session in 1979. The sponsor of the Utah repeal, Republican Representative S. Garth Jones wrote in the *Deseret News*:

> The prevailing wage rate is substantially the union pay scale. In 1933 the law was designed to place money into a depressed economy, to increase wages to get the economy moving. The law does the same thing today. But today, the economy is not depressed; inflation is the problem and the cost of government is too high. Repealing the prevailing wage will allow the free enterprise system to establish the wages of tradesmen at a substantial savings to the taxpayers. The prevailing wage law is inflationary. Additionally, the prevailing wage rate discourages non-union contractors from bidding public contracts. It encourages union contractors to bid public contracts. The effect is to force people looking for work to go to union contractors. The law is inconsistent with Utah's Right to Work law.(Feb. 23, 1979)

The first bill to repeal the statute was introduced in 1979, only to be vetoed by Democratic Governor Scott Matheson. In 1981, repeal bills were introduced in 14 states. Only in Utah did repeal succeed that year and it succeeded only after a second veto from Matheson.[19]

The bill was approved on almost straight party lines — Republicans favoring repeal and Democrats opposed. The *Salt Lake City Tribune* noted that only one Republican representative, who called himself a lifelong Republican and union member, voted against repeal and broke away from party lines.[20]

When Matheson vetoed the bill in 1981, he said, "I'm convinced that repeal of this law is not in the best interests of working people in the trades whose skills are essential for a vigorous construction industry."[21] Nonetheless, the Senate overrode the veto 21-7 and the repeal took effect 2 months later.

Those in favor of the repeal maintained that the prevailing wage law was inflationary and pro-union. Republican C. McClain (Mac) Haddow sponsored the 1981 repeal bill. He said, "the law is outmoded and is preserved only as a tool to extend union control. The law is contrary to Utah's right-to-work philosophy...."[22]

Roger Evershed, president of the Association of Building Contractors, predicted a 10 to 15 percent savings on public works projects with repeal.[23]

Arizona. The next state to repeal was Arizona in 1984.[24] Arizona's statute began as an eight-hour work day in 1912 and, by 1930, became a prevailing wage law. In a court test, the statute was found unconstitutional in September 1979.[25] In November 1984, voters repealed the statute in a ballot initiative, Proposition 300. Provisions of the ballot initiative prevented communities from implementing local prevailing wage statutes.[26]

Idaho. Idaho's prevailing wage law was first enacted in 1911 as an eight-hour law. The statute was extensively amended until 1965; efforts to repeal it began in 1979. The legislature failed to override several vetoes but did repeal the law in 1985.[27] At the same time, overtime pay requirements for more than eight hours of work were repealed.[28]

Colorado. Colorado also repealed its prevailing wage law in 1985.[29] Attempts for repeal began in the late 1970s, but it was not until after the governor had vetoed the bill several times that the veto was overridden and the repeal passed. Nevertheless, since 1985 at least one municipality, Pueblo, established its own prevailing wage rate for local construction.[30]

New Hampshire. New Hampshire joined Colorado and Idaho in 1985 when it, too, repealed.[31] Although legislators began in 1979 to try to repeal the prevailing wage law, they did not succeed until 1985. Influenced by reports of inflated costs on a school construction job, both houses passed repeal without the signature of Governor John Sununu.[32]

Kansas and Louisiana. Kansas, the first to have a state prevailing wage law, repealed it in 1987.[33] Louisiana followed in 1988 with repeal over the initial veto of the governor.[34]

Efforts to Repeal Other Prevailing Wage Laws

The Massachusetts ballot initiative. In Massachusetts, in 1988, thousands of union members, already active in the presidential election, worked with community groups to help defeat a ballot initiative that would have repealed the state's 1914 prevailing wage law. The effort to block repeal in Massachusetts appears also to have slowed efforts to repeal other state prevailing wage

laws until the midterm elections of 1994. Question 2, the repeal initiative and the hottest issue on the ballot that year, was defeated 58 to 42 percent on November 8.[35]

The Massachusetts law requires contractors to pay employees on state-financed projects a predetermined wage. Prevailing wage rates are most often based on collective bargaining agreements, which vary by trade and geographical jurisdiction.[36]

In 1988, the Association of Building Contractors (ABC) and Citizens for Limited Taxation formed a coalition that spearheaded the repeal effort, with a signature drive run by the "Fair Wage Committee." In March, a report by the Massachusetts Foundation for Economic Research, *The Peculiar Prevailing Wage Law*, presented the public rationale for a repeal of the state law.[37] The report stated that the many attempts to modify the prevailing wage law were defeated before reaching the governor's desk.[38] Using confidential data collected from a construction contractor, the authors estimated that the prevailing wage law increased construction costs by 14 percent through higher wage costs. The report concluded that, "in 1987, the prevailing wage law cost Massachusetts at least $212 million dollars."[39]

In August, in response to the report by the Foundation for Economic Research, the Regional Information Group of Data Resources Inc. presented a contrasting view. Data Resources said the earlier report had used insufficient data and oversimplified analyses.[40] Data Resources maintained that a repeal in 1990 would result in a "total wage loss of $196 million and a net employment loss of 600." Data Resources concluded that although there would be nominal tax savings with a repeal, the overall impact would be to increase unemployment and lower living standards.[41]

By the end of a hard-fought campaign, community support included the Catholic Church; the Jewish Labor Committee; the Massachusetts Nurses Association; the National Women's Political Caucus; and the National Organization for Women.[42]

A similar effort in 1994 to repeal by initiative failed on the Oregon ballot. The battleground has shifted back to state legislatures and the U.S. Congress.

Efforts to Repeal Davis-Bacon

The onset of state efforts to repeal prevailing wage laws coincided with U.S. Senate hearings in 1979 to repeal Davis-Bacon. During the first hearings, Davis-Bacon proponents defended the law with these points:

1. The act prevents the disruption of local wage and construction market conditions by the introduction of federally financed construction.

2. The act protects the prevailing living standards of construction workers by discouraging cutthroat competition by construction contractors.

3. The act provides equality of opportunity for contractors who are free to bid on the basis of skill, efficiency, and knowledge, rather than on their ability to slash labor standards.

4. The act helps maintain the high quality of the construction labor force and equal employment opportunity in the construction trades by encouraging use of bona fide training programs on federally funded construction.[43]

Advocates of repeal of Davis-Bacon said:

1. The act has inflated construction costs.
2. The act costs the federal government huge amounts of money.
3. The act is poorly administered.
4. The act is biased toward union contractors and hurts non-union contractors.
5. The act has caused wage inflation.
6. The act discriminates against minorities, because they are disproportionately represented among the low-skilled labor force.
7. The free-market system is suppressed.

Although the Davis-Bacon Act was not repealed in 1979, the Reagan administration changed the way the law is administered a few years later. The administration in 1985 altered the 30 percent rule. Until then, the Department of Labor used the modal — most common — wage to determine the prevailing wage for an occupation in a local labor market, if the modal wage to the penny accounted for more than 30 percent of all wages for that group.[44] If the modal wage accounted for fewer than 30 percent of all wages, the mean (average) wage was declared the prevailing wage.

The Reagan administration raised the threshold to 50 percent before the modal could be declared the prevailing wage. Union wages tend to be the modal wage and they tend to be above the mean or average wage for an occupation. So the Reagan administrative change had the effect of lowering the prevailing wage in areas where unions were weak.

* * *

Some of the competing claims for and against Davis-Bacon can be tested against the experience of the states — those that have repealed state prevailing wage laws, as well as those that continue to have such laws, and states that have never legislated a prevailing wage. This study examines the contentions of Davis-Bacon proponents that prevailing wage laws prevent the disruption of local wage and construction labor markets and that prevailing wage laws protect living standards and discourage cutthroat competition. This study examines, as well, the contention of Davis-Bacon opponents that the law costs government considerable sums of money and discriminates against women and minority construction workers. The study also raises two new questions. First, what are the effects of prevailing wage laws on training and human capital formation in construction? Second, what effects do these laws have on the safety and health of construction workers?

II. The Economic Effects of Davis-Bacon Repeals

Cutthroat Bidding

> As soon as the law was repealed, some of these non-union people [contractors] that had been doing small work around town suddenly just took off, and the union people [contractors] like ourselves, our market share decreased.
>
> — President, a union construction company, Salt Lake City, 1993

> [Our] company has consisted of my father and my grandfather and me from about 1963. [We are a double-breasted company.] Company A is a union [general] contractor that hires merit shop companies with no regard to union affiliation. Company B is a non-union merit shop company.... Our industry became very competitive during the mid-eighties, a lot of people are chasing the same type of work.
>
> — General contractor, double-breasted company, Salt Lake City, 1993

> We've been in business for 51 years. Before that my great-grandfather ran a construction company and so we've always done construction. Right now we're doing mostly mechanical, and we do utilities, Mountain Fuel, water lines, sewer lines, AT&T jobs. We've built homes. We've built golf courses. We've built apartment buildings. In the last probably about eight years [since the mid-1980s] there's a lot more small companies — little tiny, you know, dad and his three boys. We can't compete against them. We have too much overhead to do that and you get small start-up companies, they're willing to work for nothing for a while and you know they'll go out there for two years and just take these jobs dirt cheap. Sometimes they can't finish. They'll go broke in the middle but still, we don't want to work for nothing. We'd just rather lock the gate and wait.
>
> — Office manager, union construction company, Salt Lake City, 1993

When Utah repealed its prevailing wage law in 1981, the structure of the construction industry changed dramatically. The most obvious effect was the decline of union membership and union contractors. But this was only the most obvious effect. Underlying the decline of union contractors was the rise of the little contractor and increasing turnover of contracting firms in the business. The industrial organization of the industry changed, with an increased reliance on subcontractors.

Comparing the 12 years prior to repeal to 10 years after repeal, the share of total construction employment accounted for by the typically bigger and more capital-intensive general contractors and heavy and highway contractors fell, while the share of total employment accounted for by specialty subcontractors rose (fig. 2.1).

With the entry into the market of more contractors and smaller contractors, competitive pressure to win bids heated up. This pushed wages down. An operating engineer familiar with the bidding wars stimulated by Utah's prevailing wage law repeal tells how the bidding affected labor.

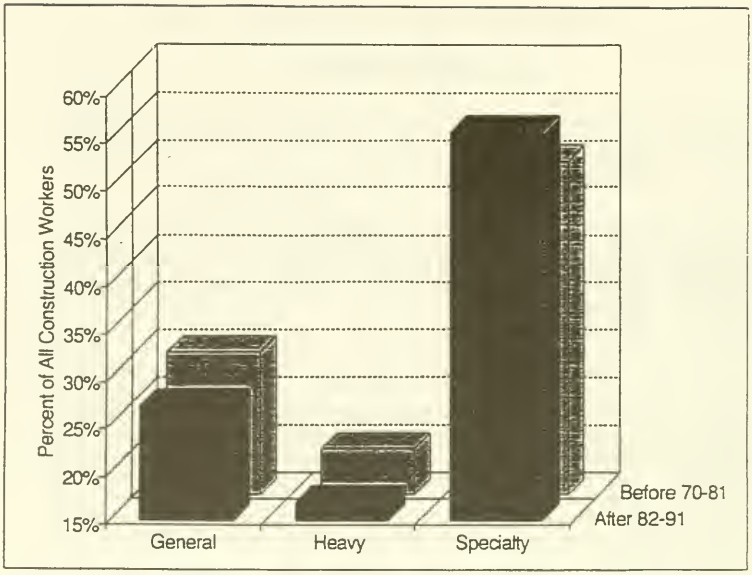

Figure 2.1 The mix of construction employment in Utah, by contractor type, before and after repeal of the state's prevailing wage law
Source: Utah LMI Annual Report, Table 5.

> When they repealed Utah's law, a lot of companies went out of business because of the cutthroat competition. A lot of companies just bought jobs so they could have a cash flow to make payments on their equipment. The design engineers would tell the contractor that let's say the job was going to cost a million dollars. The contractor would still go in there anyway and low-ball the bid. Then they would turn around to their workers and make their wages fit whatever they had to be to fit the low-ball bid.
>
> The general contractors did a lot of bid shopping after the prevailing wage law was repealed. The general contractor would get a bid from the subcontractor of say $50,000 and then he would low-ball the bid. Then, when the general got the job he would go back to the subcontractor and say yeah I've got the job but you've got to cut your bid to $40,000 to have this job I've got and the sub would go back to the workers and say OK we've got this job but now I've got to cut your wages.
>
> See costs of materials and supplies and equipment were stable. The price of bricks and the asphalt didn't go down just because you got this job. So the workers had to make up the difference for all this low-ball bidding. So basically the employer got their money off the backs of the worker. Whether it was to make money or just to break even, wages had to fall.
>
> — Operating engineer, Bountiful, Utah, 1994

But wages were not the only factor to feel the strain of an overheated bidding process. Government purchasers of construction services were now exposed to practices of low-balling bids and over-running costs. Average annual cost overruns for the Utah Department of Transportation prior to the law's repeal was 2 percent of initial accepted bid (fig. 2.2). Since the repeal, however, overrun costs have risen to 7.3 percent of the initial bid. This rise in overrun costs has come despite the introduction of computers as a tool for contractors in preparing their bids.

The cause of these increased overrun costs is the post-repeal tendency for contractors to take more risks in the bidding process under the pressure of increased competition (fig. 2.3). When the state calls for bids on a project, the state engineer prepares an initial estimate of the project's cost. In the decade prior to the repeal of Utah's prevailing wage law, winning bids averaged 91 percent of the state engineer's estimate. After the repeal, winning bids have been, on average, 89 percent of the state engineer's estimate. Contractors are shaving their bids to win state contracts. These lower estimates have not proved to be a windfall for the state.

Instead, after Utah's prevailing wage law repeal, final construction costs have been running at 95 percent of the state engineer's initial estimate. This amounts to 6 percentage points above the accepted bids. Prior to Utah's repeal, final costs were running 93 percent of the engineer's estimate, only two points higher than initial accepted bid prices.

This does not necessarily mean that the pre-repeal construction was ultimately cheaper for the state, but it does mean that the relationship between accepted bid price and actual costs was more certain and that contractors promised less before Utah's repeal, but delivered more relative to the state engineer's cost estimates.

Heightened competition after Utah's repeal has not only created uncertainty in the bidding process, but has also lowered Utah construction wages across the board. A union plumber describes this:

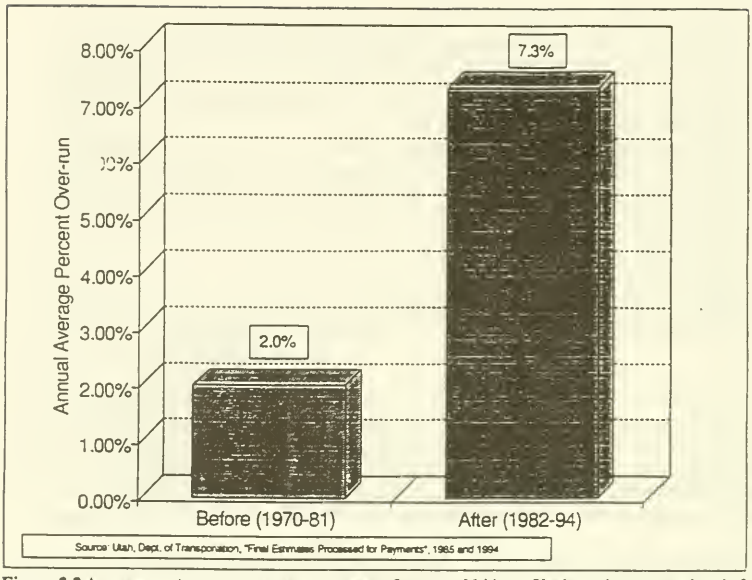

Figure 2.2 Average cost overruns as a percentage of accepted bids on Utah road construction, before and after repeal of the state prevailing wage law

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Cost overruns on the construction of Utah roads averaged 2 percent over accepted bids in the decade before Utah's repeal of its prevailing wage law. In the decade after repeal, average cost overruns rose to 7.3 percent over the accepted bid. Change orders associated with cost overruns are one of the more expensive components of construction costs.

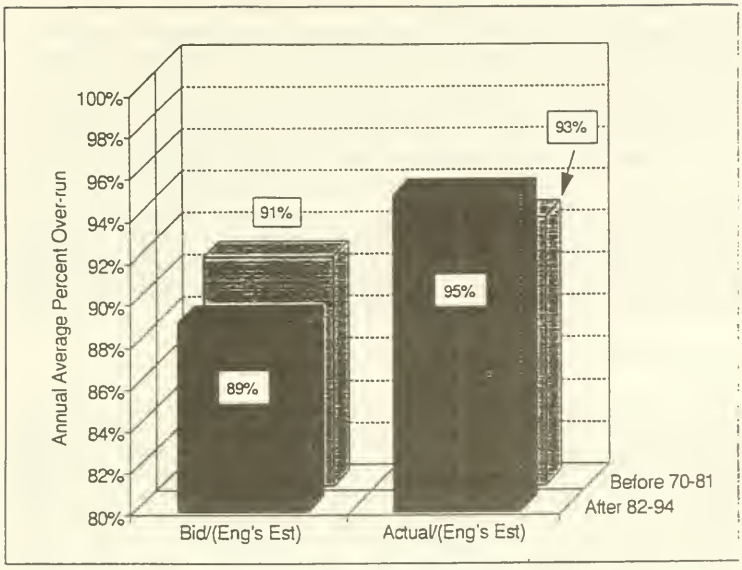

Figure 2.3 The ratio of accepted bids and final cost to the Utah state engineer's estimate of road construction project cost, before and after repeal of the state's prevailing wage law

After the Utah repeal of its prevailing wage law, competition among contractors heated up and contractors shaved their bids to win contracts. In the decade before the state repeal, accepted bids averaged 89 percent of the state engineer's estimated project cost on road construction. After repeal, accepted bids fell, on average, to 89 percent of the state engineer's estimates. However, this cutthroat bidding did not cut final project costs as a percentage of the state engineer's estimates. In the decade after the repeal, because of a tripling of cost overruns, the final project costs averaged 95 percent of the state engineer's estimate.

> After Utah repealed its little Davis-Bacon law I was working on a job as a union plumber. The electricians on the job were non-union. At that time there was terrific pressure on wages and, as I remember, the IBEW [International Brotherhood of Electrical Workers] took a big wage cut — something like $3 — from $16 to $13. Anyway, the day after the union electricians took that cut, the contractor came on the job and told these non-union guys they would have to take a $3 cut too. There was a lot of animosity around that but they took the cut anyway. They had to. Our union held off two years before we had to do the same thing the electricians did, and when we took our cut the non-union plumbers' wages fell right along with ours.
>
> — Union plumber, Salt lake City, 1994

Utah repealed its prevailing wage law just as the economy was falling into the 1982 recession. Thus, the effects of the repeal initially were tangled up with the effects of the recession. However, some of the nine states that have repealed their prevailing wage laws did so in good times and some in bad times. A comparison across states can somewhat disentangle effects of the business cycle from effects of a repeal.

A Loss of Earnings for All Construction Workers

Whatever a government might save in construction expenses from the repeal of a prevailing wage law, the saving has to be balanced against the loss of other revenues. The lower wages paid on government-financed construction have a ripple effect, lowering wages throughout the local construction industry. Construction workers in states that have a law have a higher average annual income than construction workers in states that have repealed a law; and those workers, in turn, earn more, on average, than do construction workers in states that have never had a prevailing wage law (fig. 2.4). That pattern may be explainable, however, for more than one reason. States that have different prevailing wage law policies may have higher or lower construction earnings for reasons unrelated to the wage law. For instance, repeal states might also be low-wage states in general.

It may thus be more useful to isolate earnings data for repeal states only — before and after (fig. 2.5). Average annual construction-worker earnings in the nine states that repealed their prevailing wage laws from 1979 through 1988 show a drop of $1,835 from $24,317, or about 7.5 percent in wages, adjusted for inflation and denominated in 1991 dollars, or $2,016 in 1994 dollars. The nine states are not heavily unionized and a fall of this magnitude cannot be accounted for simply by a fall of union wages to the non-union level.

In recent years, the average construction unionization rate in the nine states that repealed their state prevailing wage laws has been around 13 percent of the construction labor force.[45] With this level of union coverage, for a fall in the union wage to account for all of the fall in the average wage, at the outset of the repeal, union workers would have had to have been earning 60 percent more than non-union workers.[46] Union wage differentials typically are around 10 to 20 percent above non-union wages. Because union wages are not sufficiently high and union coverage not sufficiently wide to account for all the fall in construction wages in these repeal states, we know that non-union workers have had to absorb some share of this average earnings decline.

If one assumes that the union differential is 20 percent above the non-union wage and, after the repeal, the union wage falls to the non-union wage, both wage rates will have to fall even further to attain an overall 7.5 percent cut in earnings. Assuming that the union wage would fall to the non-union rate and then they would both fall together, the union wage would have to fall by 21 percent and the non-union rate would have to fall by 5 percent to obtain an overall fall of 7.5 percent.[47] In fact, only rarely does the union rate fall entirely to the non-union wage. A reasonable assumption would be that the union rate prior to a repeal was 20 percent above the non-union rate and after the repeal fell to 10 percent above the non-union rate. Given a 7.5 percent overall fall in earnings and a 13 percent union membership rate, union wages would have to fall 14 percent and non-union wages would have to fall 6.3 percent to obtain an overall fall of 7.5 percent. In other words, while the union rate would have to fall twice as much as the non-union rate, the non-union sector of construction workers would have to absorb much of the average percentage wage cut. The effects of state repeals of prevailing wage laws are isolated neither to union workers nor to government-financed construction.[48] They generate across-the-board cuts in the earnings of all construction workers.

A Loss of State Tax Revenues

The tax revenue losses that result from lower construction wage levels are surprisingly large. Whatever the source of this earnings decline among construction workers, states with income taxes have lost tax revenues as a result of this decline in taxable income among construction workers. And, because this lost income means lost purchasing power, states that have repealed their prevailing wage laws have also lost some sales tax revenues. On average, construction workers account for 5 to 6 percent of a state's labor force. In Utah in 1991, individuals earning $20,000 to $30,000 paid a marginal income tax rate of about 7 percent. Taking the 31,528 construction workers employed in Utah in 1991 and an average per capita decline in income of $1,835, the total loss of annual income from the Utah construction industry in Utah in 1991 because Utah's 1981 repeal could be calculated as $58 million ($1,835 times 31,528). Given a marginal tax rate of 7 percent, 1991 lost state income tax revenues might amount to $4 million (in 1991 dollars) (table 2.1). Assuming a marginal propensity to consume on sales-taxable items from changes in income of 80 percent and a sales tax rate of 6.25 percent, lost state sales tax revenues from this loss of income amount to $2.9 million in 1991.[49] Adding these two losses and bringing them to 1995 values using the consumer price index yields an estimated loss of $8.2 million in state taxes in Utah in 1991 evaluated in 1995 dollars.

The figure of $8.2 million in lost tax revenues may be an overestimate for four reasons, however. First, if wages fall and labor becomes cheaper, contractors might hire more workers. So we must consider possible increases in total income of construction workers resulting from possible increases in total construction employment after a fall in wages. Second, real wages have been falling in the United States generally, including the construction industry. Some of the lower wages after state repeals may simply reflect a long-term decline in real wages that would have taken place anyway. Third, annual earnings in construction are sensitive to unemployment. Earnings rise when unemployment falls and fall when unemployment increases. Because

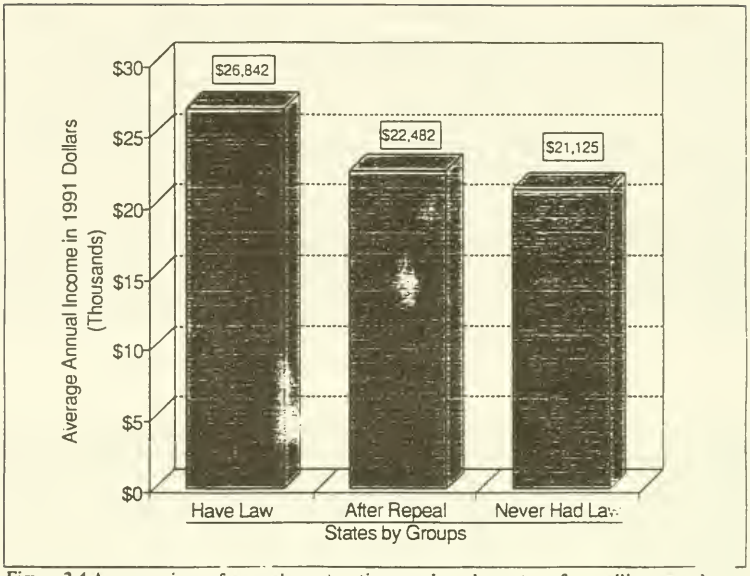

Figure 2.4 A comparison of annual construction earnings, by status of prevailing wage law Source: US DOL Employment and Earnings, 1975-91.

Figure 2.4 groups states into three categories (from left to right). The first bar, on the left, shows average annual income in 1991 dollars for construction workers in all states and years where a state prevailing wage law was enforced. This includes repeal states prior to repeal. The second bar shows the average annual earnings of construction workers in repeal states after repeal. The third bar represents average annual earnings for construction workers throughout 1975 to 1991 in all states that never had a prevailing wage law. These data provide initial evidence that repealing or never having a prevailing wage law lowers construction income not only on public works but across the entire state construction industry.

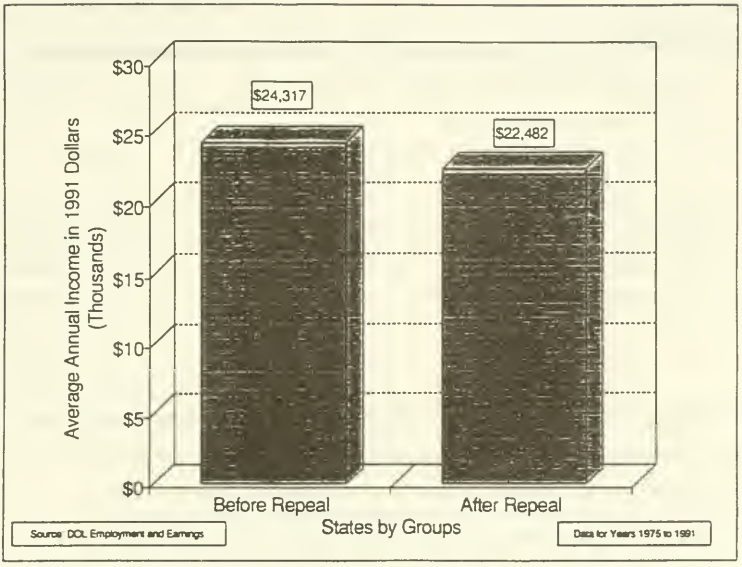

Figure 2.5 A comparison of construction earnings in nine repeal states only, before and after repeals (in 1991 dollars)

In the nine states that repealed their prevailing wage laws between 1979 and 1988, average annual income fell after the repeals (calculated in constant 1991 dollars). This fact does not control for other factors that might have been driving down wages, but it is prima facie evidence that the repeals forced lower earnings not just on public works but across the construction labor market.

Table 2.1 A simple estimate of Utah tax revenues lost in 1991 as a result of the 1981 state prevailing wage law repeal

Individual construction income prior to repeal (1991 dollars)	$24,317
Individual construction income after repeal (1991 dollars)	$22,482
Lost income due to repeal (1991 dollars)	$1,835
1991 Utah construction employment	31,528
Total lost income in construction (1991 dollars)	$57,853,380
Lost Utah income tax	$4,049,772
Lost Utah sales tax	$2,776,986
Total lost tax revenues	$6,826,758
Total lost tax revenues in 1995 dollars	$8,192,109

The average annual construction earnings in 1991 dollars for nine repeal states in the years after 1975 and before each state's repeal was $24,317. In the years after each repeal up to 1991, the average construction earnings fell to $22,482. Utah construction employment in 1991 was 31,528 workers and multiplying these by an annual loss of income of $1,835 yields a total lost income in Utah construction of $57.8 million. Based on Utah's income tax rate of slightly over 7 percent and a sales tax rate of slightly over 6 percent and a marginal propensity to consume taxable items of 80 percent, total lost state tax revenues were $6.8 million. In 1995 dollars, this is $8.2 million.

unemployment varies by state and year, some of the difference in earnings might be because of variations in the unemployment rate (see figs 2.4 and 2.5). Last, construction wages vary by region for reasons that are not directly due to the presence or absence of prevailing wage laws. These regional differences in earnings, unemployment, and long-term trends in wages can be accounted for by using linear regression analysis.

Regression Analysis of the Decline of Construction Worker Earnings

Using linear regression analysis, this section takes U.S. Department of Labor employment and earnings data for construction workers in states for 1975-91 to re-estimate the construction earnings loss resulting from state repeals of prevailing wage laws. The analysis controls for long-term trends in wages, variations in unemployment, and variation in wages by region of the country, and then focuses on the effect of (1) never having had a prevailing wage law, (2) repealing a prevailing wage law, and (3) raising the threshold for implementing a state prevailing wage law to contracts worth $500,000 or more.

U.S. Department of Labor employment and earnings data provide detailed information on annual construction earnings broken down by year, state, and type of construction contractor.[50] For 1975-91, there are 27,778 separate observations. The inclusion in these data of information about prevailing-wage law status by state and year and translation of all money values into 1991 dollars (using the consumer price index) allows us to test for (1) the effect that never having had a prevailing wage law has on per capita construction earnings, (2) the effect on individual earnings of repealing a state prevailing wage law, and (3) the effect on individual earnings of raising the threshold for applying a prevailing wage law.

In this test, we control for regional differences in construction earnings, secular trends in earnings,[51] cyclical variations in earnings as a result of variations in unemployment, and differences in earnings by detailed contractor type.[52]

The data used for this test include average earnings across all states, years, and construction trades — $26,645 per year in 1991 dollars (table 2.2).[53] States that never had a prevailing wage law account for 15.6 percent of all the observations. States that repealed their laws account for 10.5 percent of all observations after repeal and 7.8 percent of all observations before they repealed their laws, for a combined total of 18.3 percent. States that had and retained their prevailing wage laws between 1975 and 1991 account for the remaining 66.1 percent of all observations in the data set. Maryland and Oklahoma, the states with prevailing wage laws but with threshold levels of projects costing $500,000 or more, account for 4 percent of all observations. State-by-state unemployment rates in this period averaged 6.76 percent annually.

The results of this regression model estimating the effects of state repeals on construction earnings are statistically significant and the overall model has a goodness of fit of 73 percent, which means that 73 percent of the overall variation in annual earnings in the data set are explained by the model. The results may be read as follows (see table 2.3).

Begin with a constant amount of annual earnings of $33,005. (This is a starting point calculated by the regression model and is typically called the "constant.") Then select a state and a year. In any state for any year we know the status of prevailing wage laws for construction. We use Utah as an example in column (3). Utah once had a prevailing wage law, but, by 1991, that law had been repealed. Furthermore, 1991 was 17 years after the beginning of the data set and,

Table 2.2 A description of the data used in regression model of construction earnings decline

Observations	27,778
Average Earnings	$26.645
Variables	*Percentage of data*
Percent of all observations by region	
South	29.9%
Midwest	13.9%
Atlantic	10.5%
Mountain	10.5%
Corn Belt	10.3%
Pacific	8.8%
New England	8.2%
Hawaii	1.1%
Alaska	0.4%
Other control variables	
Average state unemployment rate	6.76%
Percentage of states with threshold for applying state law of more than $500,000	4.3%
Legal variables	
Percentage of all states that are repeal states	18.3%
Percentage of all states that never had state law	15.6%

Source: U.S. Bureau of Labor Statistics, Office of Earnings and Employment Statistics.

Table 2.3 A regression model estimate of the effects of state repeal on construction annual earnings, controlling for regional differences in earnings and for secular and cyclical trends in earnings

Regression Model Variables and Coefficients		Examples for 1991 (in 1991 Dollars)		
		Utah	Maryland	Georgia
(1)	(2)	(3)	(4)	(5)
Starting Point:	$33,005	$33,005	$33,005	$33,005
Regional Control Variables:				
Alaska	$15,628			
Hawaii	$7,982			
Midwest	$4,768			
Pacific	$4,638			
Atlantic	$4,617		$4,617	
New England	$1,545			
Corn Belt	$1,010			
Mountain	-$79	-$79		
South	-$2,360			-$2,360
Trend Control Variables:				
Secular Trend	-$225	-$3,829	-$3,829	-$3,829
Unemployment	-$30,231	-$1,481	-$1,784	-$1,512
Focus on Legal Variables:				
Never Had Law	-$2,960			-$2,960
Repeal	-$1,350	-$1,350		
Threshold $500,000	-$1,174		-$1,174	
Predicted Income:		$26,266	$30,836	$22,345

thus, the time variable is set at 17 and Utah is in the mountain states region. Set all other regional variables to zero and multiply the mountain states control coefficient by 1. Multiply the secular trend control variable by 17 because this is the seventeenth year of the data set. Multiply the unemployment control by 4.9% because that was the unemployment rate in Utah in 1991. Set the "never had law" variable to zero because Utah did have a prevailing wage law up to 1981 and set the threshold variable to zero, because in 1991 Utah did not have a prevailing wage law (and even when it did, the threshold was below $500,000). Now, set the repeal variable to 1 and multiply it times the repeal coefficient. Thus, the model now predicts Utah's 1991 construction income to be $26,266. That is $33,005 (the starting point) minus $79 (lower wages in the mountain states) minus $3,829 (secular down trend in real wages) minus $1,481 (associated with unemployment) minus $1,350 (because of Utah's prevailing-wage law repeal). The same exercise yields a predicted income of $30,836 for Maryland in 1991 and $22,345 for Georgia in 1991. Change the year and/or the state and the model predictions change. The R^2 statistic of 73 percent indicates that the model fits the data well and that the predicted values are close to the actual earnings in the various states for the various years.[54]

Controlling for all these variables, the model estimates that the effect of the repeal of the nine state prevailing wage laws was a negative $1,350 annual hit on construction earnings. Given average annual earnings of $26,645, this means a decline in earnings of 5.1 percent. This is a low estimate of a repeal's effect on earnings. The effect of a repeal may accumulate with time. The states that never had prevailing wage laws in construction have lower construction wages — after controlling for regional differences in wages and differences in unemployment rates. The model estimates that, in the nine repeal states, construction earnings are $2,960 less than in other states, controlling for other factors. This is an 11 percent reduction in construction earnings associated with never having had a prevailing wage law. The simple procedure in the previous section which compares construction earnings in repeal states before and after repeals estimates the repeal effect to have a 7.5 percent negative effect on earnings. *Thus, the range of estimated effects varies from 5.1 percent to 7.5 percent to an 11 percent decline in construction earnings associated with the repeal or absence of prevailing wage laws.*[55]

Increased Employment Associated with Lower Wages

As construction labor becomes cheaper, contractors may alter their crew mix to use more workers who are unskilled. Have the nine state repeals of prevailing wage laws generated higher levels of employment? Construction employment varies markedly with seasonal and cyclical trends in the economy. These employment swings can hide the effect of more jobs generated by falling wages. For instance, Utah repealed its prevailing wage law just as the construction economy was going into recession. On the surface, it looked like the repeal and wage cuts did not generate more construction employment. Multivariate linear regression analysis can control for these variations and pick out the potentially hidden effect of a repeal, controlling for other factors.

Table 2.4 presents the results of a generalized least-squares regression test of the hypothesis that, as construction earnings fall, all other things being equal, construction employment will rise. The model controls for variations in unemployment, secular trends in employment construction, and any nonwage effect on employment associated with the repeal of a state prevailing wage law.

The focus variable in the model is average annual earnings in construction and the hypothesis is that the relationship between earnings and employment should be negative. As earnings go down, employment might well go up. The regression model also includes control (dummy) variables for each state and each detailed industry classification (four-digit SIC; such as, plumbers and pipe fitters, SIC 1711). Thus, the model predicts construction employment in specific states, years, and each construction subclassification, such as plumbing and pipe fitting. In the data set for 1975-91, the average employment in a four-digit subclassification is 3,540 construction workers. The unemployment rate, not surprisingly, negatively affects construction employment and there is a small but statistically significant upward trend in employment. The effect of prevailing wage rate repeals on employment is negative, but this variable is not statistically significant which means the true direct effect of repeals on employment is zero.

However, the indirect effect of state repeals on employment working through lower earnings is not zero. The effect of earnings on employment is as theoretically expected. As earnings fall, employment increases and this estimated effect is statistically significant. From this relationship, we can estimate the indirect effect of state prevailing wage laws on employment through the repeals' effects on earnings.

Possible employment effects may be calculated for various levels of earnings decline. In table 2.5 column (1) presents hypothetical earnings declines and, in column (2), the results from table 2.4 are used to calculate a predicted increase in the construction industry when it is analyzed at the detail of 4-digit SIC codes (such as plumbers and pipe fitters, SIC 1711). As average annual construction earnings fall from a loss of $500 to a loss of $3,000, employment in given SIC industry groups rises from 24 new workers to 118 new workers.[56] Given an average employment size of a 4-digit-SIC industry group of 3,540, these hypothetical increases in employment translated in percentage terms to an increase of from 0.7 percent when earnings fall by $500 to an employment increase of 4.0 percent when earnings in construction fall by $3,000.

The Net Effect of Repeals on Government Budgets

The overall effect of state repeals of prevailing wage laws on state expenditures in construction and state tax revenues will depend on the amounts of government cost savings from such a repeal and lost tax revenues from a repeal. Government construction cost savings will depend on three questions: how much lower are wage costs after a repeal, how much lower is worker productivity at lower wages, and how much construction work does the government purchase? Lost tax revenues will depend on (1) the marginal income tax rate for construction workers earning $20,000 to $40,000 per year, (2) the sales tax rate, (3) the marginal propensity to consume taxable commodities for construction workers earning $20,000 to $40,000 per year, (4) lost per-capita construction income associated with a repeal, and (5) gained construction employment associated with a repeal. (The $20,000 to $40,000 range encompasses most construction workers.)

Previous estimates of construction cost savings associated with a hypothetical repeal of the federal Davis-Bacon Act range from 1 to 11 percent.[57] The Congressional Budget Office favors an estimate of a 1.5 percent cost savings associated with the wage effect plus a 0.2 percent cost savings because of paperwork associated with Davis-Bacon.[58] The savings may be higher or lower.

Table 2.4 Effects of wages on employment, controlling for state differences in employment, differences in the size of SIC groupings, the direct effects of repeals, and secular and cyclical trends

(1)	(2)
Starting point:	5,500 workers in each SIC group in state
Unemployment rate	Subtract 211 workers for each percentage-point rise in unemployment
Secular trend	Add 31 worker increase per year
Repeal	Subtract 170 workers (not statistically significant)
Average Earnings	Subtract 47.1 workers per $1,000 increase in earnings
Number of Observations	27,778
Avg. Employment in SIC Group by State and Year	3,540

Controlling for state differences in construction employment, differences in the size of four-digit SIC groups (such as plumbing versus electrical), secular trends, and cyclical variations in employment in each state — and the direct effect of repeals on employment — a fall in earnings resulting from a fall in wages raises employment in construction. For an average-size SIC group of 3,540 workers, a fall in earnings of $1,000 per worker would increase employment by 47 workers — or 1.3 percent. Results for controls for each of the states and SIC groups are omitted from the table.

Note: An example of a four-digit SIC (Standard Industrial Classification) group is plumbers and pipe fitters, SIC 1711.

Table 2.5 Effects of construction earnings decline on employment for an average-size detailed construction standard industrial classification (4-digit SIC) of 3,540 workers per state

Various Hypothetical Earnings Declines	Predicted Rise in Employment Because of A Fall in Annual Construction Earnings	Percentage Rise In Employment Because of a Fall in Earnings
(1)	(2)	(3)
-$500	24	0.7%
-$1,000	47	1.3%
-$1,500	71	2.0%
-$2,000	94	2.7%
-$2,500	118	3.3%
-$3,000	141	4.0%

As repeals force a fall in construction wages and earnings, construction employment rises. The model in table 2.4 indicates that a $500 fall in earnings results in a 0.7 percent rise in employment. An average annual $3,000 drop in earnings would result in a 4 percent rise in employment. This is an "inelastic" demand for labor — the percentage that earnings declines is substantially higher than the resulting percentage rise in employment (for the group). This means that even though employment rises when wages fall, the rise in employment is relatively small compared to the fall in wages. Consequently, overall income to construction workers declines after state repeals.

The effect in Utah. In this section, we will simply accept all ranges of hypothetical or estimated savings rates from 1 to 11 percent in order to examine our model of lost tax revenues as it applies to Utah (see table 2.6).

Rows 1 through 10 of table 2.6 provide half of the information needed to calculate the net effect on Utah's budget balances associated with the repeal of Utah's prevailing wage law in construction. Row 2 shows the level of employment in construction in Utah for 1987 to 1993. Taking from our regression model the value of lost income associated with a repeal of a state prevailing wage law (-$1,350) and translating that into 1994 dollars, using the consumer price index (-$1,477), we multiply this lost income times the level of construction employment in Utah for each year. This lost income associated with a repeal, denominated in 1994 dollars, is shown in row 3. Row 4 shows the gained amount of employment associated with a fall in construction wages and earnings because of a repeal. Row 5 shows average construction worker income in each year (in 1994 dollars). Row 6 shows the gained income due to additional workers shown in row 4 multiplied by average construction worker income in row 5. Row 7 reports the difference between GROSS lost income due to lower earnings and gained income due to lower wages. This net lost income is the source of the lost income tax revenues reported in row 8.

Utah's income tax rate is flat at 7 percent of income. Utah's sales tax rate is 6.25 percent. For construction workers, it is conservative to assume an 80 percent marginal propensity to consume locally on items subject to sales tax. This means that as a construction worker's income rises by $1,000, that worker will spend $800 on local commodities subject to state sales taxes. This allows for 20 percent of additional income to go to savings or purchases not subject to sales taxes. (Food purchases are subject to sales taxes in Utah.) Row 9 reports lost sales tax revenues as a result of net lost income reported in row 7. Row 10 combines lost income and sales tax revenues.

Rows 12 and 13 report in 1994 dollars the value of building and road construction in Utah not covered by the federal Davis-Bacon Act. Roughly 20 percent of road work in Utah is not covered by the federal prevailing wage law. Rows 16 through 21 calculate, again in 1994 dollars, hypothetical levels of construction cost savings associated with Utah's repeal of its prevailing wage law. These hypothetical savings range from 1 to 11 percent of total construction costs. Rows 23 to 28 subtract lost tax revenues from construction cost savings for the various hypothetical levels of cost savings.

Rows 23 to 28 show that in Utah, at total construction cost savings of below 3 percent, the repeal of the state's prevailing wage law tended to increase state finance deficits. The loss in tax revenues associated with lost construction worker earnings exceeded likely gains in construction cost savings. At and above 5 percent in total construction cost savings, the repeal helped tip the balance of state finances into the surplus. Using the Congressional Budget Office's estimate of a 1.5 percent increase in construction cost savings plus 0.2 percent in paperwork, the state of Utah would have lost more in tax revenues than it gained in construction cost savings every year since it repealed its prevailing wage law in 1981.

The likely effect of a Davis-Bacon repeal on federal budgets. For construction workers earning $20,000 to $40,000, federal marginal income tax rates range from 16 to 28 percent. There are no widely significant federal sales taxes. With these changes in mind, and using federal data for construction employment, we can use the above model to estimate the tax revenue effects of a repeal of Davis-Bacon (table 2.7).

Table 2.6 The relation of hypothetical construction-cost savings to tax revenues

1	Year	1987	1988	1989	1990	1991	1992	1993
2	Employment	26676	24981	25868	27836	31528	34902	39715
3	Lost Income	($39,397,044)	($36,893,746)	($38,203,731)	($41,110,216)	($46,562,825)	($51,545,795)	($58,653,981)
4	Gained Employment	478	447	463	498	564	625	711
5	Income	$26,206	$26,329	$25,940	$25,213	$25,166	$23,933	$23,041
6	Gained Income	$12,513,453	$11,773,180	$12,011,379	$12,562,530	$14,202,408	$14,952,327	$16,379,981
7	Net Lost Income	($26,883,591)	($25,120,566)	($26,192,352)	($28,547,686)	($32,360,421)	($36,593,468)	($42,274,000)
8	Lost Income Tax	($1,881,851)	($1,758,440)	($1,833,465)	($1,998,338)	($2,265,229)	($2,561,543)	($2,959,180)
9	Lost Sales Taxes	($1,344,180)	($1,256,028)	($1,309,618)	($1,427,384)	($1,618,021)	($1,829,673)	($2,113,700)
10	Total Lost Taxes	($3,226,031)	($3,014,468)	($3,143,082)	($3,425,722)	($3,883,250)	($4,391,216)	($5,072,880)
11	Value of State-Financed Construction							
12	Buildings	$94,436,620	$78,089,603	$93,725,806	$78,661,056	$87,518,355	$108,325,018	$121,790,378
13	Roads	$21,117,077	$9,824,176	$17,183,065	$11,970,161	$27,677,680	$14,337,135	$23,824,742
14	Total	$115,553,697	$87,913,779	$110,908,871	$90,631,217	$115,196,035	$122,662,153	$145,615,120
15	Hypothetical Savings in Construction Costs							
16	1%	$1,155,537	$879,138	$1,109,089	$906,312	$1,151,960	$1,226,622	$1,456,151
17	3%	$3,466,611	$2,637,413	$3,327,266	$2,718,936	$3,455,881	$3,679,865	$4,368,454
18	5%	$5,777,685	$4,395,689	$5,545,444	$4,531,561	$5,759,802	$6,133,108	$7,280,756
19	7%	$8,088,759	$6,153,964	$7,763,621	$6,344,185	$8,063,722	$8,586,351	$10,193,058
20	9%	$10,399,833	$7,912,240	$9,981,798	$8,156,809	$10,367,643	$11,039,594	$13,105,361
21	11%	$12,710,907	$9,670,516	$12,199,976	$9,969,434	$12,671,564	$13,492,837	$16,017,663
22	Net Gain (or Loss) in Tax Revenues							
23	1%	($2,070,494)	($2,135,330)	($2,033,994)	($2,519,410)	($2,731,290)	($3,164,595)	($3,746,729)
24	3%	$240,580	($377,055)	$184,184	($706,786)	($427,369)	($711,352)	($1,094,426)
25	5%	$2,551,654	$1,381,221	$2,402,361	$1,105,839	$1,876,551	$1,741,891	$2,557,876
26	7%	$4,862,728	$3,139,497	$4,620,539	$2,918,463	$4,180,472	$4,195,134	$5,210,178
27	9%	$7,173,802	$4,897,772	$6,838,716	$4,731,087	$6,484,393	$6,648,378	$7,862,481
28	11%	$9,484,876	$6,656,048	$9,056,894	$6,543,712	$8,788,313	$9,101,621	$10,514,783

Table 2.7 Projected effects of a repeal of Davis-Bacon on the federal budget

1	Employment	6,000,000		
2	Lost Income (Employment*$1,477)	$8,862,000,000		
3	Gained Employment (Employment*1 0179)	107,400		
4	Avg. Income in 1994	$27,373		
5	Gained Income from New Employment	$2,939,829,040		
6	Net Lost Income	$5,922,170,960		
7	Lost Income Tax at Various Marginal Income Tax Rates			
8	16 % Marginal Rate	$947,547,354		
9	20 % Marginal Rate	$1,184,434,192		
10	28 % Marginal Rate	$1,658,207,869		
11	Value of Federal Construction	$11,528,571,429		
12	Hypothetical Savings In Construction			
13	1 %	$115,285,714		
14	3 %	$345,857,143		
15	5 %	$576,428,571		
16	7 %	$807,000,000		
17	9 %	$1,037,571,429		
18	11 %	$1,268,142,857		
19	Net Gain (Loss) in Budget	16 % Marginal Rate	20 % Marginal Rate	28 % Marginal Rate
20	1 %	($832,261,639)	($1,069,148,478)	($1,542,922,154)
21	3 %	($601,690,211)	($838,577,049)	($1,312,350,726)
22	5 %	($371,118,782)	($608,005,621)	($1,081,779,297)
23	7 %	($140,547,354)	($377,434,192)	($851,207,869)
24	9 %	$90,024,075	($146,862,763)	($620,636,440)
25	11 %	$320,595,504	$83,708,665	($390,065,012)

Hypothetical savings

With an employment level of 6 million construction workers and an average annual earning of $27,000, the lost income from lower wages exceeds the gained income from increased employment. This results in differing values of lost income tax revenues depending on the assumed marginal tax rate. With a value for federal construction of $11.5 billion, the hypothetical savings on construction from a repeal depends on the assumed cost-savings rate. At a marginal income tax rate of 16 percent, net budgetary savings from a repeal occur only with construction cost savings rates above 5 percent. At a 20 percent marginal tax rate, net budgetary savings from a repeal occur only with construction cost savings rates above 9 percent. At a 28 percent marginal tax rate, net budgetary savings from a repeal never occur within the range of cost savings between 1 and 11 percent. In short, a repeal of the Davis-Bacon Act will hurt the federal budget deficit.

There are approximately 6 million construction workers in the United States.[59] Table 2.7, row 2 shows what would have been the loss in income that these construction workers would have experienced given the 1994 value (-$1,477) of our regression estimate of the effect of state repeals on construction income. Row 3 presents an estimate of increased national construction employment associated with lower wages. Row 4 presents average annual income for construction workers in 1994. Row 5 multiplies gained employment in row 3 times average income in row 4 to obtain the increase in total construction workers' income associated with a hypothetical repeal of the Davis-Bacon Act. Row 6 subtracts gained workers' income from new employment from lost income as a result of lower wages to yield net lost worker income resulting from a hypothetical repeal. Rows 8 through 10 present lost income tax revenues due to net lost income at three marginal tax rates of 16, 20 and 28 percent. In fiscal year 1990-91, the federal government spent $10.491 billion on construction.[60] Row 11 presents this sum in 1994 dollars. Rows 13 through 18 present levels of hypothetical savings in construction costs associated with a repeal of Davis-Bacon. Recall that the Congressional Budget Office estimates total the savings to be 1.7 percent, but others have presented savings estimates between 0.5 percent and 11 percent. Rows 20 through 25 present the net effect on the federal budget of hypothetical construction cost savings at various projected rates minus tax revenue losses at various marginal tax rates. Rows 20 through 25 show that only at very low marginal tax rates and very high construction cost savings rates does the federal budget benefit from a repeal of Davis-Bacon. At a marginal tax rate of 20 percent and a construction cost savings rate of 3 percent, the federal budget loses $838 million annually in 1994 dollars based on the 1991 level of federal government expenditures on construction.

Summary

In Utah, the repeal of the state prevailing wage law led to an overheated bidding process which added uncertainty to the cost of state construction. In the decade before the repeal, cost overruns on state-financed road construction averaged 2 percent of accepted bids. In the decade after the repeal, average road construction cost overruns rose to 7 percent of the accepted bid. A closer inspection of the data showed that, after repeal, contractors tended to present bids at a lower

percentage of the state engineer's estimate of project costs but that, after change orders, the projects ended up costing the state a higher percentage of the state engineer's project cost estimate than in the decade prior to repeal. After the Utah repeal, contractors shaved their bids to get state jobs and more than made up for low-ball bids with subsequent change orders. This caused the increased cost overruns.

An econometric analysis controlling for variations in regional differences in construction earnings, variations in unemployment rates, and general trends in real earnings showed that the nine state repeals' effects on earnings was a loss of $1,477 in 1994 dollars. Econometric modeling also showed that construction employment rose in repeal states after repeal by about 1.7 percent. This employment increase appeared controlling for variations in unemployment and long-term trends in construction employment growth.

Thus, in assessing the budget effect of repeals of prevailing wage laws, we are able to do two things. First, balancing the overall loss of construction worker income resulting from lower average earnings against the overall gain in construction worker income resulting from higher construction employment, we are able to estimate the change in overall construction worker income and consequently the change in government tax revenues resulting from these repeals. Second, taking a very wide range of hypothetical construction cost savings, we are able to estimate the net gain or loss to government budgets associated with repeals.

In Utah, given its structure of income and sales taxes, the state budget benefits from its repeal of the prevailing wage law at construction cost savings at and above 3 percent. At the Congressional Budget Office estimate of a 1.7 percent construction cost savings (including paperwork costs), the state of Utah's budget has annually lost money as a result of the repeal every year since the repeal.

At the federal level, construction cost savings must be substantially higher to generate any budget benefit from a repeal of the Davis-Bacon Act because of the federal income tax structure. At the more conservative estimate of 3 percent construction cost savings with a 20 percent marginal tax rate and the 1991 level of federal construction spending (in 1994 dollars), the federal government would lose $838 million per year by repealing the Davis-Bacon Act.

The justification often given for repealing the Davis-Bacon Act is that a repeal would help cut the federal deficit. That is incorrect. A repeal of Davis-Bacon would help raise the federal budget deficit. This is because the purpose and effect of a repeal is to lower the cost of wages on federally funded construction projects. But lower wages and earnings will not be isolated to federally financed public works. Earnings would decline across the entire construction labor market and the government would lose more in income tax revenues than it will gain in construction cost savings.

III. The Effect of State Repeals of Prevailing Wage Laws on Training and Minority Participation in Training

This chapter presents a case study of the effects of the repeal in 1981 of Utah's prevailing wage law on unionization, construction earnings, and training. The Utah repeal accelerated the decline in the union share of the state's construction labor market, drove down average construction wages in the state, and decreased union apprenticeship training for construction. No public or private source has offset the decline in training. In response to the decline in union membership and training, contractors have reduced turnover in order to retain skilled workers and to minimize screening and training costs. In response not only to the decline in construction wages but also to the coincident decline in health and pension benefits, however, experienced construction workers are leaving their trades for careers in other industries. Thus, while construction firm turnover is on the decline, turnover in the industry is on the rise.[61]

This chapter examines also whether the Utah experience in training can be generalized to the eight other states that have repealed their prevailing wage laws in construction. The U.S. Department of Labor Bureau of Apprenticeship Training keeps state-by-state records on registered union and non-union apprenticeship programs in construction. These records suggest that what happened in Utah is typical of what has happened in other states after repeal of their prevailing wage laws. The ratio of apprentices to journeymen in construction is higher in states that retain their prevailing wage laws compared with states that never had such a law. The rate of apprenticeship training in states that repealed their prevailing wage laws was substantially higher before the repeal compared with after the repeal. This remains true even when one controls for regional differences in training rates, the effect of unemployment, and long-term trends in training.

There are not many minority workers in Utah in construction, but nationally there are. ("Minority" here refers to nonwhites, male and female.) Some have argued that prevailing wage law repeals will open job opportunities for unskilled minority workers and lower the unemployment rate of minorities, relative to whites. However, there is no evidence to support this claim. Black-white unemployment ratios *rose* in repeal states after repeals. Black-white unemployment ratios tend to be slightly higher in states that have never had prevailing wage laws compared to states that have retained their laws. While repealing prevailing wage laws probably has not caused black-white unemployment ratios to go up. There is no evidence to suggest that a repeal of the Davis-Bacon Act would cause black-white unemployment ratios to decline.

The repeal of prevailing wage laws has especially hurt the training of minorities. There are proportionately more minorities trained as construction apprentices in states that retain their prevailing wage laws compared with states that have never had such laws. In repeal states, the proportion of minorities trained in construction apprenticeship programs declines substantially after the repeals. This remains true after controlling for regional differences in relative training rates, unemployment, and long-term trends in minority training which are independent of state repeals of prevailing wage laws.

The decline in minority participation in construction apprenticeships after repeal is tied to a decline in unionization. Union apprenticeship programs tend to be large. Apprenticeship coordinators move apprentices from contractor to contractor in order to broaden the experiences of the apprentice. Typically, because non-union apprenticeship programs tie the apprentice to one contractor, the non-union programs tend to be small, single-firm programs, as opposed to larger,

joint programs. At the same time, affirmative action regulation of apprenticeship programs applies only to programs having five or more apprentices. With the repeal of prevailing wage laws, not only does formal apprenticeship training decline, but also remaining apprentices are found more often in smaller apprenticeship programs. Thus, one effect of state repeals of prevailing wage laws has been to move more apprenticeship training out from under the oversight of affirmative action regulation. The result has been a substantial decline in minority participation in the remaining apprenticeship training.

The Effect of Repeal on Construction Unions and Wages

When Utah repealed its prevailing wage law in construction, wages became a focus of competition between contractors bidding on state jobs. Many union contractors went non-union or double-breasted (with union and non-union subsidiaries) to match or beat the lower wages of non-union contractors, and other union contractors lost market share.

Because construction employment was falling, many union members went non-union with their traditional employers to stay employed. The vice president of a large industrial and commercial general contracting firm in Utah noted that, after the repeal,

> There were a lot of union workers that carried their card in their shoe. They worked open shop until a union job came available. A lot of folks all of a sudden started to find homes over there [in the open shop] and never came back (personal interview, May 15, 1993).

Consequently, in the short-run, at least, contractors that remained union did not have a significant labor productivity advantage over many of the newly non-union contractors. This effectively forced remaining union contractors out of much of the construction market.

With the decline of union contractors, Utah construction union membership fell (fig. 3.1).[c] The decline in membership was accelerated by the 1982 recession. Union membership appeared to recover from the recession, but many dues-paying members were working open shop. With the onset of the next downturn in Utah construction in 1986, union membership began to fall steadily. These data are consistent with the story that union members working in the open shop eventually found a home there and quit paying their union dues.

With the repeal of the prevailing wage law and the resulting decline in unionization in Utah, average wages in construction fell relative to the average Utah wage (fig. 3.2). Construction wages, which had ranged from 120 to 125 percent of the average Utah wage before the construction boom of the 1970s, exceeded 130 percent during the boom. When construction employment growth stopped in the late 1970s, construction wages fell back toward the high end of their normal premium over average Utah wages. But with the repeal of the prevailing wage law, construction wages fell to a new lower range of 110 to 115 percent of the average wage in Utah. This is an across-the-board decline in construction wages and not isolated to union earnings nor the earnings of construction labor on public works. This relative decline in construction earnings in Utah is consistent with the overall decline in construction wages following repeal (chapter II).

The data for Utah actually underestimate the effect of Utah's repeal on construction workers' earnings, in part because the data do not include the change in value of benefits.

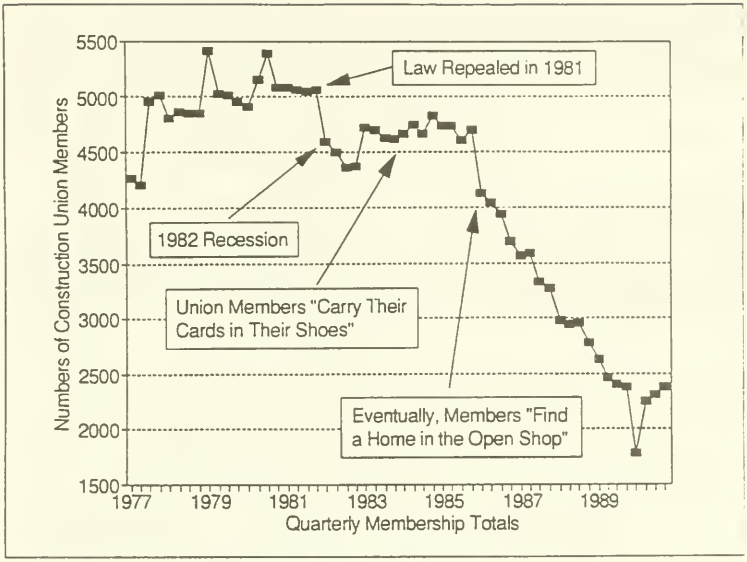

Figure 3.1 Union membership in construction in Utah, 1977-89
Source: Utah State Building and Construction Trades dues records.

Union membership began to decline with the prevailing wage law repeal and the onset of the 1982 recession. Membership recovered somewhat in 1983 but not as fast as overall construction employment. With the 1985 downturn in Utah construction employment, union membership began a steady decline to less than half its late-1970s peak.

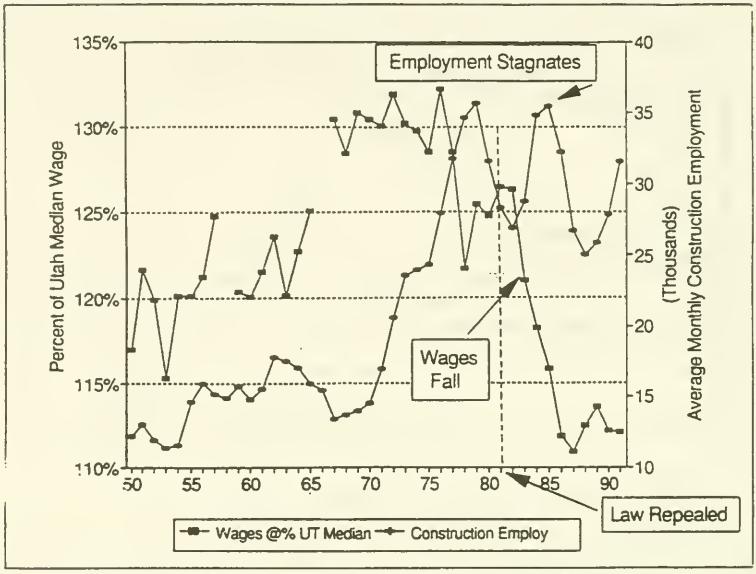

Figure 3.2 Wages and employment in construction in Utah relative to wages

Source: Utah Job Security, Division of Labor Market Information, Annual Report, table 5.

Construction employment in Utah grew rapidly in the 1970s, but growth stopped in the 1980s and cyclical fluctuations became more pronounced. Wages that ranged between 120 and 125% of the Utah median wage prior to the construction boom of the 1970s, rose above 130% of Utah's median wage during the boom. As the boom ended, wages moved down to their normal range. With the repeal of Utah's prevailing wage law in 1981, wages plummeted.

Typically, unionized construction workers receive better health and pension benefits than do non-unionized workers. Lower benefits, particularly health and pension benefits, contribute to the increase in overall labor turnover in and out of the construction industry in Utah. This increased occupational turnover, we will see, led to a younger, less trained, and less experienced labor force.

The Relation between Repeals and Black Unemployment

It has been argued that the Davis-Bacon Act was passed, in part, to restrict southern blacks from northern construction job opportunities. It is further claimed that the current high and rising ratio of black unemployment rates relative to white unemployment rates is partly due to restrictions that prevailing wage laws impose on the ability of unskilled black labor to compete with better skilled white labor. From these beliefs, it is argued that a repeal of the Davis-Bacon Act would lower black unemployment relative to white unemployment by opening up jobs for less-skilled black labor.[63]

These arguments are not directly supported by the available evidence. Black unemployment rates are separately collected for only five of the nine states that have repealed their state prevailing wage laws. Arizona, Idaho, New Hampshire, and Utah do not have large-enough black populations to generate meaningful unemployment statistics. However, Alabama, Colorado, Florida, Kansas, and Louisiana do have sufficient black populations to test the above argument. The ratio of black-to-white unemployment for five repeal states can be shown using state unemployment rates for white and blacks and white males and black males (fig. 3.3). In all cases, black unemployment rates are more than twice the rate of white unemployment. Before the repeal of state prevailing wage laws, however, the male black-to-white unemployment ratio and the overall black-to-white unemployment ratio were both less than their corresponding ratios after these states repealed their prevailing wage laws.

This does not mean that the repeals caused the black-to-white unemployment ratios to rise. Black-to-white unemployment ratios were rising across the country in the 1980s in repeal states and elsewhere. The rise in the black-to-white unemployment ratios simply reflects this time trend.[64]

By comparing the states that retain their prevailing wage laws with those states that never had prevailing wage laws, we can eliminate the effect of time trends in black-to-white unemployment ratios. The black-to-white unemployment ratio and the male black-to-white unemployment ratio are both lower for states with prevailing wage laws compared to states without prevailing wage laws — averaging unemployment rates across states and years from 1974 to 1992 (fig.3.4).[65] The male unemployment ratios in figure 3.4 are almost the same and statistically they are not different.

These data do not support the proposition that a repeal of the Davis-Bacon Act would ameliorate in any significant way the relative unemployment of blacks to whites.

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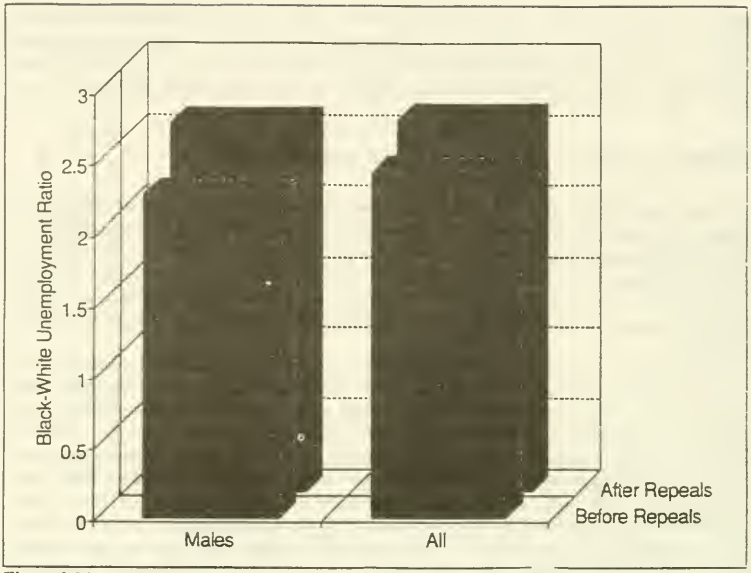

Figure 3.3 The ratio of black-to-white unemployment in five repeal states, before and after repeals
Source: US DOL Geographical Profile of Employment and Unemployment 1974-92.

Five repeal states — Alabama, Colorado, Florida, Kansas, and Louisiana — have sufficient black populations to report a separate black unemployment rate and a black male unemployment rate. In these five states, in the decade prior to repeals, the ratio of black to white unemployment rates was 2.43. After repeals, the ratio rose to 2.61 which means black unemployment was even higher in relation to white unemployment. For males, the black-to-white unemployment ratio was 2.28 before repeals and 2.60 after repeals. These ratios are based on unemployment rates for the entire state not simply construction. If repeals opened job opportunities for blacks, the effect is bidden. Black-white unemployment ratios rose throughout the 1980s and the rise is not due directly to the repeals.

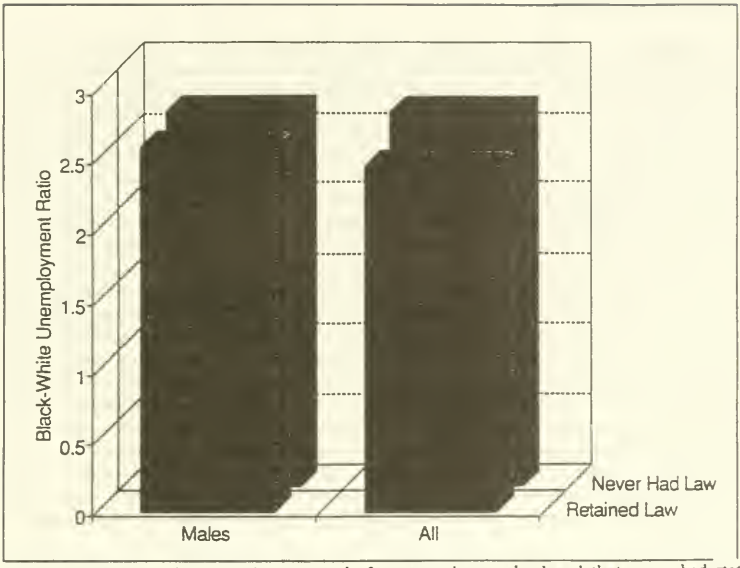

Figure 3.4 Black-to-white unemployment ratio for states that retained and that never had state prevailing wage laws
Source: US DOL Geographical profile of employment and unemployment 1974-92.

Comparing the black-to-white unemployment ratio in states that retained their state prevailing wage laws throughout the last 25 years with the ratio in those states that never had state prevailing wage laws eliminates the effect of a strong time trend that shows up in before-and-after analysis. The male black-to-white unemployment ratio is slightly higher in the states that never had prevailing wage laws compared with states that retained theirs. The difference is not statistically significant. The overall black-to-white unemployment ratio is significantly greater in the states that never having had a prevailing wage law, but this is because of female unemployment differentials, which are unlikely to be significantly affected by construction employment patterns.

A Decline in Training

With the decline in union membership and in relative wages, training for construction in union apprenticeships and through vocational schools – declined in Utah. Union apprenticeships are tied to the availability of union jobs. For instance, unionized plumbers and pipe fitters in Utah, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, historically have attempted to maintain apprenticeship rates at 10 to 15 percent of the number of union journeymen plumbers in the state (fig. 3.5). As employment boomed in the 1970s, however, the union could not meet the demand for journeymen from union contractors. Consequently, the union increased apprenticeship rates to a peak of 25 percent in 1975. The boom persisted, but the backlog had been remedied. So the union lowered its apprenticeship rate back to normal ranges by 1978. Employment during the construction boom peaked in 1979 and membership in the plumbers and pipefitters' union peaked in 1981.

With the repeal of the Utah prevailing wage law, the union dropped its apprenticeship rate to 10 percent, a historical low. Union membership fell slightly in 1982 and began a steeper decline in 1983. Faced with these sustained declines in membership, the union cut its apprenticeship rate even lower in 1986 and thereafter. Unions hit harder by declines in membership have scaled back their apprenticeship programs further. The carpenters' union, Utah locals 184 and 1498 of the United Brotherhood of Carpenters and Joiners of America, which graduated seventy in a class in 1977, graduated five in 1992. The Utah International Union of Bricklayers and Allied Craftsmen suspended its apprenticeship program altogether.

The decline in union apprenticeship training in Utah has not been offset by a rise in other sources of training. Because the repeal of Utah's prevailing wage law was motivated by a desire to limit state expenditures, state legislators were not eager to raise funding for state-sponsored vocational training.

Although the number of vocational graduates in construction grew in the 1970s, the construction labor force grew more rapidly. Thus, while the 1970s was the heyday of vocational training at Salt Lake Community College, vocational graduates as a percentage of the construction labor force had already begun to decline.[66]

The steady decline in state-supported vocational training as a percentage of the construction labor force through good times and bad supports the notion that the state has simply tried to get out of the business of vocational training in construction. The fall in union membership and wages has made construction a less attractive career. At the same time, unions are less able to train construction workers. As unions are weakened and community colleges drift toward academic offerings, the capacity to respond smoothly to an upsurge in construction jobs is undercut. And federally sponsored Job Corps vocational training is not in a position to fill in the gap.

Federal revenues pay for Job Corps training in Utah at the Weber Basin and Clearfield centers. Federal funding in real terms for these centers has not expanded, but the Weber Basin Job Corps Center, which draws predominantly from the Utah population, has significantly cut its construction worker training throughout the 1980s. This center committed itself to changing from an all-male student population in 1980 to 50 percent female by 1990. To accommodate this switch, training for traditionally male occupations such as construction, have been scaled back

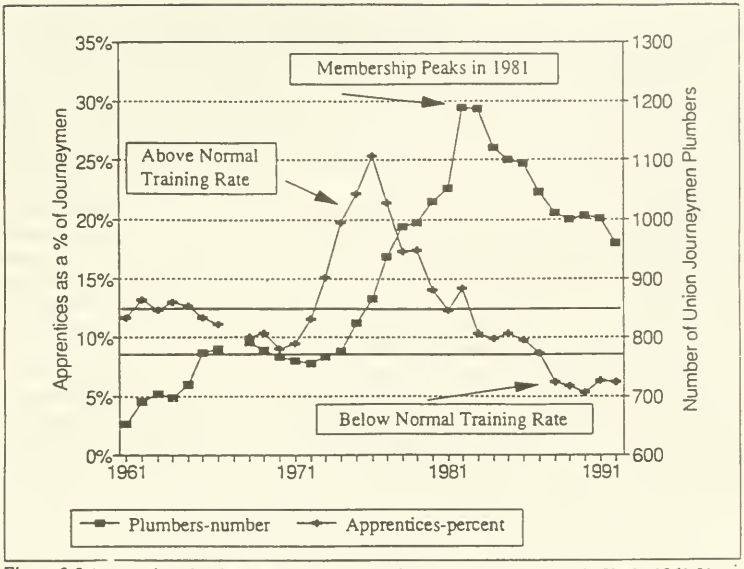

Figure 3.5 Apprentice plumbers as a percentage of journeymen plumbers in Utah, 1961-91
Source: Utah plumbers and pipe fitters local's membership records.

The plumbers' union in Utah has historically attempted to train apprentices at a rate of 10 to 15 percent of their journeymen members. As employment boomed in the 1970s, the union could not meet journeyman demand and consequently expanded apprenticeship training rapidly. As the numbers of journeymen grew to meet demand, apprenticeship training was reduced to normal rates. But with the repeal of the state prevailing wage law in 1981, union membership declined and apprenticeship training rates were cut to all-time lows.

to accommodate new offerings in traditionally female occupations, such as office management and clerical work. Cement masonry and heavy-equipment training have been eliminated, and instruction in carpentry, painting, and brick laying has been cut in half.

The Clearfield Center has graduated approximately 100 construction trainees per year since the early 1970s. Fewer Clearfield graduates go into the Utah labor market, compared with Weber Basin graduates, because most of Clearfield's students are from out of state Perhaps 10 percent of Clearfield's graduates go into the Utah labor market, but this percentage rises during periods of local labor shortage. It is estimated, however, that at most only 25 percent of Clearfield's graduates will stay in Utah.

Even without union pressure, it is possible that a shortage of skilled construction workers in Utah will raise wages and induce a new generation of young people to enter construction vocational training for the industry. Nonetheless Utah is now in a building boom — when wages would normally rise — and annual earnings in construction relative to annual earnings for all Utahns continue to fall. In 1993, the most recent year for which data are available, the construction earnings premium fell to a historic new low of 103 percent of the average annual earnings for all non-agricultural workers in Utah.[67]

Utah is now in a building boom, one that has come quickly. High-quality training programs, which take time to create, are not in place to meet the demand. This adds an additional lag to the usual time it takes to train a skilled laborer. Utah's current boom has relied partly on using a less-skilled labor force (which partly accounts for the lower construction earnings premium) and partly on travelers from California, which is currently in a construction lull. Whether the Utah construction industry can rely, in the long run, on training systems for construction workers in California remains to be seen. A pick-up in California construction would quickly bleed away the skilled workers Utah is now attracting. This is one difference between state repeals of prevailing wage laws and a federal repeal of the Davis-Bacon Act. If construction cycles are not synchronized, it is at least possible, if a state is lucky, for one state to freely ride on the training systems of another state. A repeal of Davis-Bacon would create a nationwide decline in training. Under such a circumstance free riding on the training of another area would not be an option.

Market Responses: Training, Turnover, and Careers

The market in Utah has not successfully made up for the decline in union and state-sponsored training. At the national level, the non-union Association of Building Contractors (ABC) has attempted to replicate the union system of bargaining for hourly contributions to a training fund. It is difficult, however, to induce ABC's member contractors to include general training costs in their bids. Each contractor fears that his competitors will not include training costs. Thus, in an attempt to be the low-cost bidder, ABC contractors often refrain from including training costs despite the ABC initiative. Consequently, very little ABC training has occurred in Utah.

In Utah, non-union apprenticeship programs operate, however, in the licensed trades of electricians and plumbers. In 1992, there were 846 non-union licensed apprentice electricians in Utah and 2,068 non-union journeymen. Thus, there are 4 apprentices for every 10 journeymen in the non-union sector. In contrast, there were 123 apprentices and 607 journeymen in the union sector in 1992, or 2 apprentices for every 10 journeymen. In the non-union sector, apprentices begin at around $6 per hour with no benefits. Over a four-year period, the state mandates that

the apprentice wage rise to 80 percent of a journeyman's pay. In the union sector, apprentices begin at $7 per hour with an additional $3 in benefits. Their wages rise to $14 per hour plus $3 in benefits over five years. Non-union apprentices are sponsored by a particular contractor that oversees on-the-job training, and these apprentices take classwork at a participating community college. Union apprentices work under the direction of an apprenticeship coordinator, rotate among employers for on-the-job training, and take classes at community colleges and union apprenticeship centers. Roughly 90 to 95 percent of the union apprentices complete their programs and graduate to journeymen status, while only 15 to 20 percent of the non-union apprentices graduate. Given these rates, in four years, out of 846 non-union apprentices, we should expect 125 to 170 journeymen to be graduated. In five years in the union sector, out of 123 apprentices, 110 to 115 apprentices would graduate to journeymen electrician. Thus, while the non-union sector accounts for more than 85 percent of all electrician apprentices, it accounts for about 60 percent of journeymen graduates.

Economic theory is consistent with this pattern wherein non-union apprentices are paid less and graduate at a lower rate than union apprentices. Economic theory posits that in the absence of marketwide institutions or government subsidies, individual workers will have to pay for their own on-the-job training when the skills learned are general to an industry and not specific and unique to the activities of a particular firm. The worker-learner pays for training by accepting a wage that is lower than the value to the firm of that worker's marginal product. By working for less than the worker's worth to the employer, the worker pays the employer for on-the-job training. That beginning non-union electrical apprentices earn $6 per hour while union apprentices earn $10 per hour (including benefits) is consistent with the theoretical proposition that non-union apprentices pay for their own training by taking a discounted wage below their marginal value to the contractor.

Because the employer does not pay much for non-union training, the theory suggests that the employer has no stake in the worker's training. If the worker leaves, the employer does not lose any investment in the worker's human capital. So, the employer will tolerate high levels of turnover. Because the worker is receiving less than what the worker can earn in other jobs with no on-the-job training, the worker may be tempted to exit jobs with training when current personal budget needs become pressing. So, on both the employer side and the worker side, turnover is tolerated in the non-union sector. This view is consistent with the higher turnover rates among non-union apprentices, but other factors also contribute to the roughly 20 to 90 percent differential in non-union to union graduation rates.

Because the non-union employer prices new hands at discounted wages that shield the employer from investing in the human capital of new workers, the employer does not screen new workers extensively to forestall subsequent turnover. The employer's failure to preselect new workers for aptitudes and attitudes consistent with a long-term attachment to construction work adds to the turnover among non-union construction apprentices. In contrast, the joint apprenticeship boards of unions and union contractors do considerable preselection for aptitude and attitude before letting a candidate into an apprenticeship program. This is because the union contractors and unions will invest in the union apprentices' training.[68]

In the non-union sector, workers may also leave apprenticeships if it becomes apparent that the employer offering training at a discounted wage is not delivering on that training promise to train. Because employers are able to discount wages of apprentices below their current worth to

the employer, it is tempting to engage in bait-and-switch tactics whereby training is promised but not delivered. By saving on training costs, the employer can earn an additional profit from employing green hands at discounted wages. In the union sector, because employers and union journeymen invest in the training of the apprentices, bait-and-switch tactics are less attractive. Because the apprentices' wage is not discounted as much below what they could earn elsewhere, the apprentices are not as tempted to leave. Thus, the non-union sector must begin training five apprentices to graduate one journeyman, while the ratio in the union sector is close to one to one.

While non-union contractors tolerate high levels of turnover among apprentices, with the decline in training and union membership, non-union Utah contractors have sought to reduce the turnover among trained journeymen. There has been a long-term decline in labor turnover in construction (fig. 3.6). This long-term decline can be explained with a pooled, cross-sectional, time-series linear regression model, as can the differences in turnover rates in Utah by contractor type from 1956 to 1991 (table 3.1). Not surprisingly, this model shows that turnover was higher in years in which variations in monthly construction employment were great. It also shows that contractors with larger crews tolerated proportionately more turnover. Contractors employing more-expensive labor sought to reduce turnover. When union membership was a high percentage of the construction labor force, turnover was higher simply because contractors losing one good worker could turn to the hiring hall for a reasonable substitute at little additional cost. When vocational schools were graduating a large number of construction-trained students relative to the Utah construction labor market, contractors tolerated more turnover because the market had proportionately more trained substitutes. The numbers of union membership and vocational graduates have been on the decline, however. Thus, this regression model shows that, over time, contractors have responded by reducing the turnover among journeymen .

Although turnover at the firm level has been on the decline, workers may be entering and leaving construction at higher rates than 20 years ago. In 1970, Utah construction workers, on average, were 42 years old.[69] By 1990, before the recent construction boom had begun in Utah, the age had fallen to 33 years.[70] Much of this decline may be due to the construction expansion in the 1970s, which brought in a new generation of younger workers. But the decline in age may also be a result of both the decline in health and retirement benefits and the decline in relative wages associated with the decline in unions. Although non-union contractors increasingly are providing health and retirement benefits, especially to their key people, the health benefits tend to be more expensive for a given level of care and the retirement 401K plans lack the insurance component associated with union-defined benefit plans.

National Trends in Registered Apprenticeship Training

The U.S. Department of Labor, Bureau of Apprenticeship Training, monitors registered apprenticeship programs — union and non-union — in the construction industry. Data are available for 1975-78 and 1987-90. Not all states have reported to the Bureau of Apprenticeship Training for all years during these periods. Nonetheless, 29 states did report registered construction apprentices for every one of those years. The states included 6 states that eventually repealed

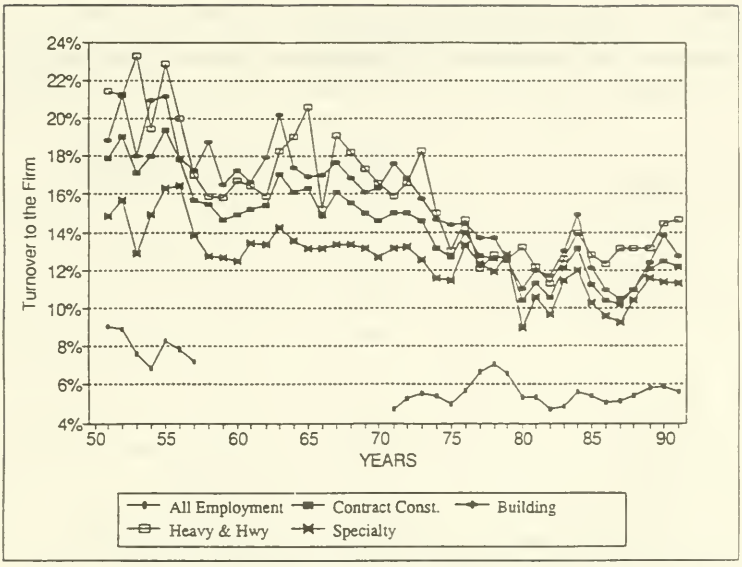

Figure 3.6 Turnover in Utah's construction industry compared with all employment statewide
Source: Utah Job Security, Division of Labor Market Information Annual Report, table 5.

As the number of trained journeymen in Union hiring halls declines and the number of non-union journeymen declines, firms respond by reducing turnover.

Table 3.1 Linear regression model of turnover rate in construction in Utah, 1956-91
Source: Utah Job Security, Annual Report, table 5.

Dependent variable = firm turnover in construction[a]

Variable[b]	Actual Coefficient	Standardized Coefficient
Union Members[c]	1.76	.24
New Vocational Graduates[c]	2.45	.20
Real Wage	-.076	-.62
Seasonality	2.12	.15
Workers per Contractor	.052	.40
(Constant)	-1.88	

[a] The actual variable is ln(turnover/(1-turnover)) to meet the technical requirement in linear regressions of being an unbounded dependent variable.
[b] All independent variables are statistically significant at the 1% level.
[c] As a percentage of the construction labor force.

Adjusted R^2 Square = 0.24
Number of Cases = 351
Contractor Type = 4-digit SIC

Contractors in Utah have tolerated higher labor turnover when union membership has been a high percentage of the labor force and when new vocational school graduates have been plentiful. Turnover has been more common in years when monthly employment has fluctuated a lot. Contractors have been more willing to tolerate turnover among lower-paid workers and have had to accept higher levels of turnover among larger work crews. Standardized coefficients indicate that worker skill and crew size have had the largest effect on variations in employer turnover rates, while the availability of both union members and new vocational graduates have had larger effects than seasonal fluctuations in employment.

their prevailing wage laws, 4 states that never had prevailing wage laws, and 19 states that retained a state prevailing wage law throughout the period. These 29 states can be divided into the categories "repeal," "never-had," and "retained-law," for comparison (figs. 3.7 and 3.8). No state had repealed its prevailing wage law by 1978. By the end of the first quarter of 1987, all nine repeal states had passed their repeals except Louisiana which repealed in 1988. The data for 1987 are for the summer of 1987, after Kansas had repealed in that year.[71]

In the "before" period, states that had prevailing wage laws — those that retained such a law and those that had not yet repealed theirs — typically trained a higher percentage of registered apprentices than the states that never had a prevailing wage law. For unknown reasons, the year 1976 is an exception to this pattern. During this pre-repeal period, the states that would eventually repeal their laws had as high or higher training rates compared with the states that kept their laws throughout the period. By 1987, training rates had fallen for all states, but they had fallen least in states that had retained their prevailing wage laws. By 1989, the states that had repealed their prevailing wage laws had training rates as low as the states that never had prevailing wage laws. This is clear evidence that repealing state prevailing wage laws lowers formal apprenticeship training.

A simple analysis can help isolate the effect on training of repealing state prevailing wage laws from a general downward trend in construction apprenticeship training. Apprenticeship training rates for states that repeal their prevailing wage laws in the late 1970s and 1980s are presented as a percentage of the training rates of states that retained their prevailing wage laws (table 3.2, col. 2). Throughout the 1970s, before repeals, the repeal states had training rates that were at or above the average training rates for states that had and would keep their prevailing wage laws. After the repeals in the late 1980s, the repeal states had training rates that fell to as little as 63 percent of the training rates of states that kept their prevailing wage laws. By 1990, the repeal states had relative training rates that were as low as the states that never had prevailing wage laws. Thus, while training in construction has been falling for all states, the fall for repeal states has been the most precipitous and — setting time trends aside — the repeal states matched the training rates of the retaining states prior to repeal and fell to the rates of states never having had prevailing wage laws after the repeal.[72]

Unlike the simple analysis just presented, however, a multiple linear regression analysis can control for other factors, such as differences in state unemployment rates or regional differences in training (table 3.3). The dependent variable in the analysis is a transformation of the training rate for each state, where the training rate is calculated as registered apprentices as a percentage of all construction employees in a state and year. For technical reasons associated with the assumptions of linear regression analysis, the actual dependent variable is the natural log of the odds ratio of the training rate where the odds ratio is calculated as (the percent trained) divided by (one minus the percent trained).[73]

In the regression model, regional differences in training rates are controlled for with the regions corresponding to standard Bureau of Labor Statistics regional categorizations. Unemployment differences are controlled for by state and year. The data are for the years 1975-78 and 1987-90. The focus variable is REPEAL, a dummy variable equalling 1 once a state repeals its prevailing wage law. A second focus variable is NEVERHAD which equals zero for all states except for those nine states that never had a state prevailing wage law in construction. For those states, NEVERHAD equals 1. There are 297 observations in the data set. California,

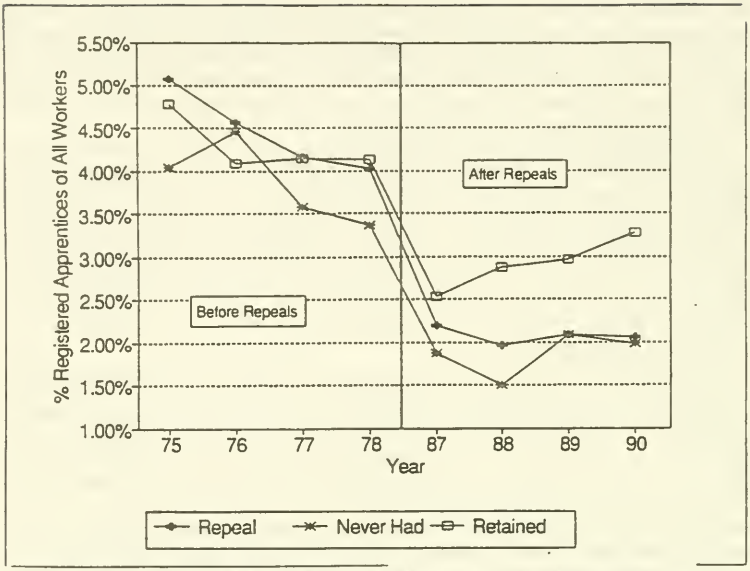

Figure 3.7 Apprenticeship training rates, by state groups, before and after repeals
Source: U.S. Department of Labor, Bureaus of Labor Statistics and Apprenticeship Training.

This figure shows apprentices as a percentage of all construction workers in 29 states grouped by state treatment of prevailing wage law. In the four years before the repeal of state prevailing wage laws, states that would eventually repeal their laws had high apprenticeship training rates. States that would retain their prevailing wage laws also had high training rates. Except in 1976, states that never had prevailing wage laws in construction had relatively low training rates. In all state groupings, training rates in the late 1980s were lower than training rates in the late 1970s. However, after the several state repeals, those states that retained their prevailing wage laws had relatively higher training rates. Those states that repealed their prevailing wage laws eventually had training rates that matched the states that had never had prevailing wage laws.

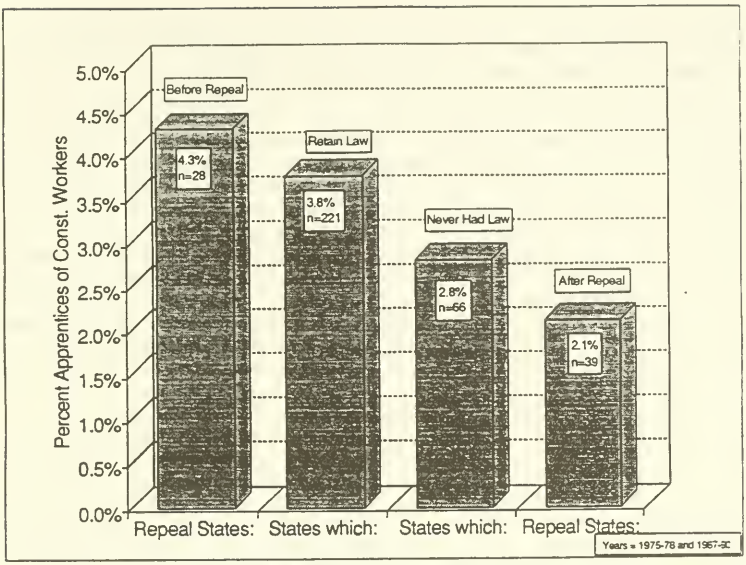

Figure 3.8 Apprenticeship training rates, by state
Source: U.S. Department of Labor Bureaus of Labor Statistics and Apprenticeship Training.

States are grouped here into four categories, repeal states before and after their repeals of prevailing wage laws, states that retained their prevailing wage laws, and states that never had prevailing wage laws. This simple pattern shows that repealing or not having prevailing wage laws reduces formal training in construction. (Part of this before-and-after picture is due to an overall downward trend in registered apprenticeship rates in construction overtime.) Repeals hurt apprenticeship training because repeals hurt unions. Non-union construction contractors do less training and less formal, high quality training.

Delaware, the District of Columbia, Hawaii, and Rhode Island are omitted from the analysis because they did not report to the Bureau of Apprenticeship Training of the U.S. Department of Labor during the second period of our analysis. The model is a good fit of the data with an adjusted R^2 of 45 percent, and all variables are statistically significant.

The focus variable in the regression analysis REPEAL — a marker for states that repealed their prevailing wage laws — is negative. This means that — controlling for unemployment, time trends and regional differences in training — when states repeal their prevailing wage laws, the training rate goes down. At the mean training rate for the entire data set of 3.7 percent, this model indicates that repeals drove down training rates to around 2.1 percent. The NEVERHAD variable, marking states that have never had a prevailing wage law, is also negative and statistically significant but smaller than the REPEAL variable. This is because of a close correlation (about 40 percent) between never having had a prevailing wage law and being a southern state. This means the analysis could not fully distinguish between the hypothesis that training rates in the South were low because many of these states never had prevailing wage laws and the hypothesis that other reasons associated with being a southern state caused training rates to be low. The REPEAL effect was easier to pick up compared to the NEVERHAD effect, simply because the repeal states presented information about their training rates before and after each state repealed its prevailing wage law.

Thus, looking at training rates from a variety of measures and methods of analysis, it is clear that state repeals of prevailing wage laws have significantly lowered formal, organized, and quality training of construction workers. The effect is to lower training rates by about 40 percent.

When apprenticeship training falls as a result of repeals of state prevailing wage laws, minority participation in apprenticeship programs falls even farther (fig. 3.9). Minorities comprise almost 20 percent of all construction apprentices in the repeal states in the years before repeal of state prevailing wage laws. In the same states, after repeal of their prevailing wage laws, minority participation in apprenticeship programs falls to just under 13 percent of all apprentices. While construction apprenticeship training is falling in these states by around 40 percent, the share of minorities in this downsized training also falls by about 36 percent. One reason for the decline in minority training is the decline in union training.

In figure 3.9, the share of minorities in apprenticeship training appears the same for states that retain their prevailing wage laws and states that never had such laws, but this is an illusion. Many of the states that have never adopted prevailing wage laws are in the South where there is a high percentage of minorities in the overall state population (fig. 3.10). We account for that factor with the ratio of the minority percentage in construction apprenticeship programs, divided by the minority percentage in the state population. This ratio is 100 percent if the two percentages are equal. We call this the "minority reflection percentage" because it measures whether minorities in apprenticeships reflect minorities in the state population.

In the repeal states before repeal, the minority reflection percentage was 107 percent, which means that the construction apprenticeship programs slightly over-represented minorities. After repeal, minority representation in apprenticeships fell to 85 percent of minority representation in the state population. In the states that retained their prevailing wage laws throughout the period under review, minority representation in apprenticeships just about mirrored minority representation in the state population (a ratio of 102 percent). But, in states that never

Table 3.2 Training rates in repeal and never-had states as a percentage of training rates in states that retained their wage laws

	Repeal States	States Never Having Had Law
(1)	(2)	(3)
1975	106%	85%
1976	112%	109%
1977	100%	86%
1978	97%	81%
1987	87%	74%
1988	68%	52%
1989	70%	70%
1990	63%	60%

Except in 1976, the states that never had prevailing wage laws have training rates which fall from 86 percent of the training rates of states that retain their prevailing wage laws to 60 percent of the training rates of states that such laws. Repeal states mirror the training rates of retaining states prior to their repeals. After the several repeals of state prevailing wage laws — from 1978 to 1988 — the average training rate in repeal states falls to 63 percent of the training rates in states retaining the laws. This is a simple way of viewing the roughly 40 percent drop in registered construction apprenticeship training caused by state repeals of their prevailing wage laws.

Table 3.3 Training rates in repeal and never-had states as a percentage of training rates in states that retained their wage laws, 1975-78 and 1987-90

Source: **US Department of Labor and Bureaus of Labor Statistics and Apprenticeship Training**

Dependent Variable= Log of the Odds Ratio of the Percent Apprentices

Independent Variables		Effect on Percent Trained
Region 1		-1.11
Region 2		-0.99
Region 3		-0.77
Region 4		-0.81
Region 5		-1.18
Region 6		-1.10
Region 7		-0.53
Region 8		-0.55
Time trend		-0.02
State unemployment rate		0.04
Marker for states never having had law (NEVERHAD)		-0.13
Marker for states once they repealed their law (REPEAL)		-0.44
Constant		-0.78
Adjusted R^2	=0.45	
Number of Cases	=297	
Years	=1975-78 and 1987-90	

All variables are statistically significant at the 1% level except the marker for states never having had a prevailing wage law. That variable is significant at hte 10% level.

Region 1: CT MA NH RI VT ME Region 2: NY NJ DC PA DE MD
Region 3: WI IL IN OH MI Region 4: ND SD MO MN KS IA NE
Region 5: WV VA NC SC GA FL AS MS LA AR TN KY Region 6: TX OK NM AZ
Region 7: MT WY CO UT ID Region 8: CA OR WA NV

This multiple linear-regression model shows that — even when controlling for regional differences in training rates, variations in state unemployment over time, and an overall decline in apprenticeship training — repeals of state prevailing wage laws significantly lower apprenticeship training rates.

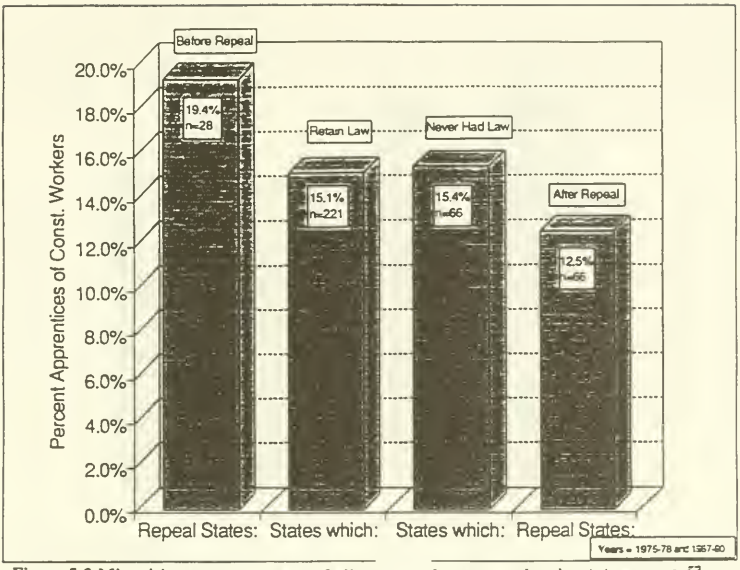

Figure 3.9 Minorities as a percentage of all construction apprentices by state groups, 53
Source: U.S. Department of Labor Bureaus of Labor Statistics and Apprenticeship Training.

In repeal states, before repeal of their prevailing wage laws in construction, minority participation in registered apprenticeship programs averaged 19.4 percent of all apprentices. After the repeals, minority participation fell to 12.5 percent of all apprentices. The n=28 and n=66 refer to the number of state-year observations in each group. States that kept their prevailing wage laws and states that never had prevailing wage laws had roughly the same rate of minority participation throughout 1975-78 and 1987-90. On average, however, populations of the states that never had prevailing wage laws had much higher proportions of minorities.

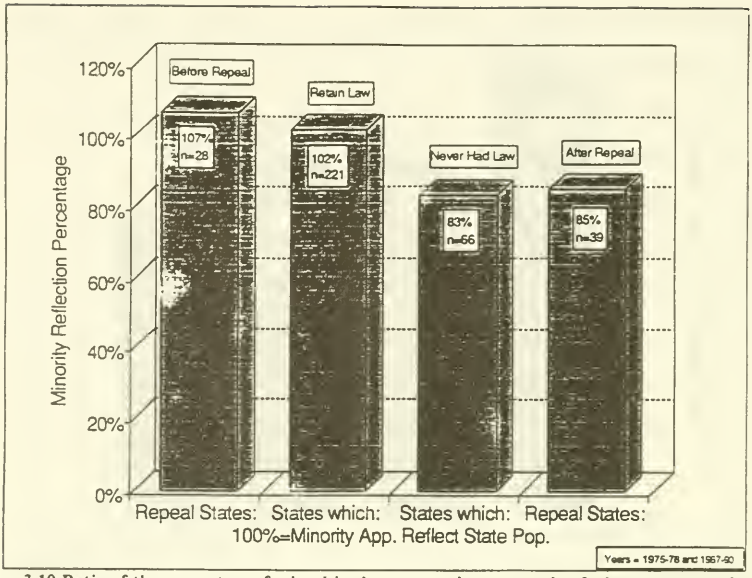

Figure 3.10 Ratio of the percentage of minorities in construction as a ratio of the percentage of minorities in the state population, by state groups

Source: U.S. Department of Labor, BAT and BLS.

A ratio of 100% would show that the proportion of minority apprenticeships in each group of states reflects the minority as part of the state population. Minority participation in construction apprenticeships mirrored the state population in repeal states prior to repeal and in states that retained their prevailing wage laws throughout 1990. After the repeals, however, minority participation in apprenticeships in repeal states fell to levels that seriously under-represented minorities and resembled the under-representation characteristic of states that never had prevailing wage laws. Non-union apprenticeship programs tend to be small and do not fall within the oversight of affirmative action guidelines — which may be why the repeals have led to an under-representation of minorities in apprenticeships.

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had prevailing wage laws, minority representation rates averaged 83 percent throughout the period. Thus, both repealing states prior to repeal and "retaining" states throughout the period had minority participation in construction apprenticeships that mirrored the state population. In contrast, both repealing states after the repeal and states which never had prevailing wage laws had substantially under-represented minority participation in construction apprenticeships.

Summary

Employment in construction is inherently unstable, because the industry fluctuates cyclically and seasonally — and firms expand and contract their employment as they win and lose job bids. Unions have acted like a flywheel in the industry, creating career workers when there were only casual jobs. Unions did this by facilitating the movement of journeymen from employer to employer and minimizing the employers' transaction and screening costs for the training. Unions also lowered training turnover by providing a mechanism whereby employers and journeymen could rationally invest in the human capital of apprentices. This raised the wages of apprentices so they would stay with training and induced the union and employers to promote the passage of apprentices to journeymen in order to preserve their investment. Unions also encouraged the career attachment of trained journeymen by providing relatively high wages and additional wages in the form of health and retirement insurance, which are increasingly attractive to workers as they age. By creating career jobs in a casual labor market, unions created the institutions needed to make human capital investment a rational market activity.

With the decline of unions in Utah, the formation and preservation of human capital skills have become less-rational. Self-investment by apprentices becomes more precarious as the differential between the apprentices' wage and alternative wages in other industries widens. It simply becomes more reasonable for apprentices to leave construction if unforeseen personal budget problems emerge. The high turnover among non-union apprentices represents in the aggregate a considerable loss of human capital to the construction industry, even though it is not a loss the employer or the state pays for directly. With the lowering of construction wages, it becomes reasonable for young construction workers to limit the amount of human capital they invest in themselves. With the worker's lower stake in construction skills and with the disappearance of wages in the form of health and old-age insurance, it becomes more reasonable for journeymen construction workers to abandon the construction field when they start families. This represents an additional loss of built-up human capital.

Contractors in Utah have attempted to minimize the effect of this increased skill volatility within the industry by encouraging firm attachment. Still, despite initiatives, such as profit-sharing, 401K plans, and health insurance, designed to attach key workers to a firm, construction turnover remains well above the average for the Utah labor market. In short, union decline has meant the decline of the career worker within Utah construction, a diminution in incentives to invest in construction skills, and an increased loss of accumulated human capital as apprentices and journeymen leave the trades. Although the loss of human capital and career jobs in this industry does not appear as a private cost on the ledgers of any contractor, the industry and society at large pay a price for the loss of financially secure occupations in construction. Not only is quality in the industry put at risk when human capital stocks are allowed to dwindle, but the

quality of social life is imperiled when we dismantle the institutions that generate stable jobs out of unstable working conditions.

This instability is mirrored in the continuing decline of construction wages in Utah. Despite a return to boom times in Utah construction, construction worker earnings continue to fall relative to average annual earnings in the state. Utah's construction boom has had to piggy-back on the training of California construction workers. Whether Utah can continue this free ride is uncertain. What is certain is that there is no free ride from the effects of a federal repeal of Davis-Bacon. Experience from state repeals indicates that formal apprenticeship training in construction will fall by about 40 percent if Davis-Bacon is repealed. If state experiences are predictive, this will hurt minority workers most. In states that repealed their prevailing wage laws, minority participation in apprenticeship programs fell from reflecting each state's minority population to significantly under-representing minorities. This pattern is consistent with states that have never had prevailing wage laws. Although states that retain their prevailing wage laws have minority participation in apprenticeships that reflects their state populations, states that have never had prevailing wage laws have minority participation rates that are only about 80 percent of the rates in which minorities are present in the state population.

From chapter II, we have seen that a repeal of the Davis-Bacon Act will lower construction wages and earnings. That finding is consistent with the case study of Utah presented in this chapter. We have also seen that a repeal will significantly reduce training in construction. It may well be that as the stock of human capital falls in construction and as the jobs market becomes casual and turbulent, more minority workers will obtain jobs. But they will not obtain training as they do now in the states that retain their prevailing wage laws and they will not be entering into occupations that offer a middle-class income with benefits.

IV. Construction Safety Put at Risk

Construction is dangerous work. In fact, it is the nation's most dangerous industry. According to the U.S. Bureau of Labor Statistics:

- More than 900 construction workers are killed each year — 3 to 5 per workday.
- 510,500 work-related injuries and illnesses occur annually — almost 2,000 cases per day.[74]
- 204,800 cases involve lost work days, for a total of 4.6 million days lost from work per year.

A recitation of the hazards associated with construction work, however, cannot ignore the substantial variability of accidents and their consequences across job sites and institutional environments. Accidents and injuries are the product of a complex interaction between worker and environment, and injuries will be either fostered or limited, depending on how well this interaction promotes safety. This chapter focuses on the effect of the repeal of state prevailing wage laws on injuries in construction. The focus on safety rather than overall health, at this juncture, is strictly a concession to the paucity of reliable data on illnesses related to construction.

Why might the repeal of a state prevailing wage law affect the safety record in construction? How does the presence or absence of such a law alter the important interaction of worker and environment? Certain parameters are key to the incidence of injury. For instance, construction work is more dangerous when workers are untrained and inexperienced. Stresses associated with a lack of job security, the pace of work, and the possible avenues for grievance all feed into the critical interaction of work and environment on any job site.

In Utah, following the 1981 repeal of the state's prevailing wage law, training declined as the construction labor market was going into recession (see chapter III). The lack of training and widespread use of inexperienced workers began to surface as the construction economy rebounded. One experienced pipe fitter recalls of that era:

> Contractors were using inexperienced people with no training. They had no training program to begin with, they were hiring people off the street with no experience in the trade. What they would do is everyone that got hired on one project that did not have a history or work experience on a construction job, they had to wear a red sticker on their hard hat. They had to wear that for 30 days. Well everywhere you would looked there were red stickers everywhere. I estimate that about 40 or 50% of the people had one on their hat. They called them "hamburger kids."
>
> — Pipe fitter, Salt Lake City, 1994

Lack of training and inexperience are not the only sources of work injuries. In Utah there was a greater sense of job insecurity after the repeal of the state's prevailing wage law and the related decline in union work. Without union security, ex-union workers with training and experience found themselves taking chances they would not have taken prior to the repeal. One union worker who was forced to take work in the open shop recalls:

I got hurt in 1986. There was a great deal of pushing to get the job done. I was working with an older man that came out of retirement. He was about 70 years old. We were waiting for a cherry-picker to move some pipe. We were waiting for a couple of hours, because they laid off some operators. After two hours of waiting, two hours of superintendents eyeballing us, I went and walked under the piece of pipe, which weighed 253 lbs. I carried it over to the structure, but I didn't see because the snow was covering a hole in the ground. I stepped in it, it was about 14 inches deep and 2 feet across. I pulled muscles in my back, pulled some discs in my back. What I was thinking of at the time was, I can't afford to lose this job. All these guys walking by me looking at me, I thought we better get this pipe in there some way. I was nervous, I should not have done it but I did.

— Union pipe fitter, Salt Lake City, 1994

Why Prevailing Wage Repeals Lead to Increased Injury Rates

We can postulate, based on studies of safety and health in the construction industry, why repeal of the state prevailing wage laws is associated with increases in injury rates. Take as the first premise these telling facts:

- The rate of injuries "decreases substantially as length of service increases."[75]
- Large, experienced employers in construction have injury rates that are 80% below small-to-medium-size contractors.

Repeals of state prevailing wage laws have altered construction labor markets in those states in several ways that affect job site safety:

1. The bidding process has become cutthroat.
2. Workers are less likely to make a career of construction work.
3. Even as experienced workers are leaving the industry in increasing numbers, apprenticeship training has declined.

Cutthroat competitiveness in contracting. In Utah, the repeal of the state's prevailing wage law led to a burgeoning of start-up contractors with limited track records (chapter II). These new entrants joined existing contractors in a heated bidding process for state contracts that resulted in lower bids, but ultimately higher costs, as a percentage of the state engineer's estimate of the job cost. Cutthroat competitiveness, in other words, resulted in increased cost overruns. Inexperience at the firm level, small size, and cost pressures all contribute to compromised safety on the job.

Because of their relative inexperience, new firms tend to face greater on-site coordination problems than firms with longer track records. Such problems can add to costs, but also directly endanger safety. Problems in coordination, perhaps related to delivery of materials and equipment, or in scheduling work with subcontractors, lead to greater uncertainty with respect to the construction schedule. Uncertainty is a breeder of safety risk, as workers can less easily anticipate and plan for the daily contingencies of work.

New entrants in the industry also are generally smaller in size than established firms. Smaller firms have worse safety records than larger firms, in part because of greater laxity of enforcement of safety rules and the relative absence of formal safety programs.

Of greatest importance, however, is the firm's reaction to increased pressure to cut costs in

the face of intensified competition and cost overruns. There is a tendency to speed up work and cut back on safeguards in the face of such pressures.

Workforce turnover. When state prevailing wage laws were repealed, worker turnover increased significantly, as the industry found it harder to retain workers for long-term careers (see chapter III). Repeals resulted in a decline in the union share of the construction labor market, driving down average construction wages in the state and decreasing union apprenticeship training for construction. In response to the decline in union membership and training, contractors attempted to reduce turnover — to retain skilled workers and to minimize screening and training costs. Still, the decline in wages and in health and pension benefits drove experienced construction workers from their trades for careers in other industries. Thus, while construction firm turnover is on the decline, turnover in the whole industry is on the rise.

Those who now work on federally funded Davis-Bacon projects are more likely to be union trained because of the demanding nature of these large, civil engineering jobs. They are likely to know more about new processes and changes in technology, and they are more likely to have graduated from certified apprenticeship programs.

In states that retain their prevailing wage law — compared with those that never had such a law or repealed such a law — the proportion of construction workers receiving training is higher and injury rates are lower. A decline in wages and benefits leads to a flood of inexperienced workers into the industry as well as a decline in skilled, experienced workers needed to supervise the recruits and to assure that they work safely.

Decline in the skill base of the construction labor market. Experience is a major determinant of safe work performance — and productivity. Training of skilled construction workers is normally conducted through apprenticeship training programs, most of which are operated by unions and employers through joint trust funds. An integral part of this training is learning on the job while properly supervised. In that way, workers learn from experience while on a variety of projects. Among other things, apprentices are trained to identify and correct ergonomic problems, to detect physical hazards, and to detect the presence or release of hazardous chemicals. Knowledge about safety and health hazards, appropriate protective measures, and hazard communication methods are all important elements that apprenticeship programs provide.

When little Davis-Bacon acts are repealed, training and apprenticeship programs decline and the skill base of workers erodes (chapter III). Without employer incentives to continue apprenticeship programs, knowledge of proper safety and health procedures declines as well.

Summary. The combination of these factors — cutthroat competition, a decline in training, and an erosion of career attachments to the industry — affects the safety-related skill and experience base of the construction labor force. Workers become more injury-prone and know less about the kinds of risks they are taking. Furthermore, as the workforce becomes less skilled and its wages in construction decline, workers are forced to take more safety risks to simply make a living. Furthermore, contractors caught in the competitive speed-up often press their workers to speed up and take more chances. Workers are put at increased risk in an already hazardous industry.

A Comparison of Injury Rates

The U.S. Bureau of Labor Statistics' annual *Occupational Injuries and Illness Survey* reports accidents by state and year. Construction injuries vary by the type of work being done. We will analyze these BLS data for plumbers and pipe fitters employed by specialty contractors in the Standard Industrial Classification (SIC) 171. This specialty trade has injury rates in the mid-range of rates for construction and this trade is often employed on public works.

For pipe fitters in 1978-91, states that had state prevailing wage laws averaged 13.83 injuries for every 100 workers employed (fig. 4.1). In addition, in the states that repealed prevailing wage laws, injury rates for plumbers and pipe fitters before repeal was slightly less (13.54 per 100 workers) than the injury rates in other states with state prevailing wage laws. By contrast, states that never had state prevailing wage laws had higher injury rates (14.74 per 100 workers) and the repeal states, after they repealed the prevailing wage laws had the highest injury rates of 15.41 per 100 workers. These increases in injuries resulted in a similar increase in workdays lost per worker.[76]

It is possible that injury rates might differ between states for reasons other than changes in legal status. The union pipe fitter who got hurt in Utah in 1986 slipped partly because of snowy conditions. Perhaps factors associated with safety unrelated to repeal coincidentally worsened after repeal. We controlled for factors such as regional differences in weather, time trends in injury rates, and the effects of unemployment in a multiple regression analysis of construction injuries among plumbers. This approach permitted us to isolate the effect on safety of changes strictly associated with the repeal of state prevailing wage laws.

We modeled injury cases per worker as a function of geographic regions, the unemployment rate, a time trend, and the legal status of state prevailing wage laws (table 4.1). Three measures of injury rates are reported: injury cases per worker (col. 2); serious injury cases per worker, defined as injury cases that required time off from work (col. 3); and the number of lost work days per worker (col. 4). In all three models, our focus variable, the act of repealing a state prevailing wage, has a positive coefficient. This means that as the states repealed their prevailing wage laws, injury rates went up according to all three measures.

In our model, the dependent variables are logged. This allows for a straightforward interpretation of the repeal variable as a percent increase in injury rates. So, as these states repealed their laws, the injury case rate went up by 14 percent, the serious injury case rate went up by 15 percent and the work days lost per worker per year went up by 12 percent. All of these findings are statistically significant.

All other things being equal, states that have never had prevailing wage laws also have higher injury rates for plumbers and pipe fitters in the construction industry. In terms of injuries per worker and serious injuries per worker, our results indicate that states that never had prevailing wage laws affecting construction had a statistically significant 5 to 9 percent higher rate compared with states that have prevailing wage laws.[77]

The Cost of Injuries

The costs of injuries in the construction industry are staggering. Of the nation's $62 billion spent on workers' compensation, approximately 30% goes for construction-related injuries and illnesses,

Table 4.1 Regression model of the effect of state repeals on injury rates for plumbers and pipe fitters

Source: US DOL, BLS.

Dependent variable: log of injury rate for plumbers and pipe fitters (by year and state)

	Cases Per Worker	Serious Cases Per Worker	Days Lost Per Worker
(1)	(2)	(3)	(4)
(Constant)	-1.21	-2.16	-6.85
Region 1	-0.39	-0.41	-0.10*
Region 2	-0.27	-0.29	0.14*
Region 3	-0.46	-0.70	-0.35
Region 4	-0.40	-0.65	-0.44
Region 5	-0.34	-0.49	-0.29
Region 6	-0.33	-0.40	-0.13*
Region 7	-0.32	-0.64	-0.43
Region 8	-0.18	-0.26	-0.25
Time Trend	-0.02	0.00*	0.01
Unemployment	-0.18	-0.19	-0.04*
Never Had Law	0.09	0.07	0.05*
Repealed Law	0.14	0.15	0.12
Adjusted R^2	35%	49%	16%
Observations	350	313	350

* Not statistically significant.
(Regions are standards BLS categories).

In columns (2), (3) and (4), we report three models of injury rates, the first for injury cases per worker (2), the second for serious injuries per worker (3) and the last for days lost per worker (3). Controlling for regional differences in injury rates, general trends in injuries over time and variations in state unemployment rates, all three types of injuries are higher in states that have repealed their prevailing wage laws and states that never had such laws. In repeal states, injury rates climb from 12 to 15 percent compared to the rates prior to repeals.

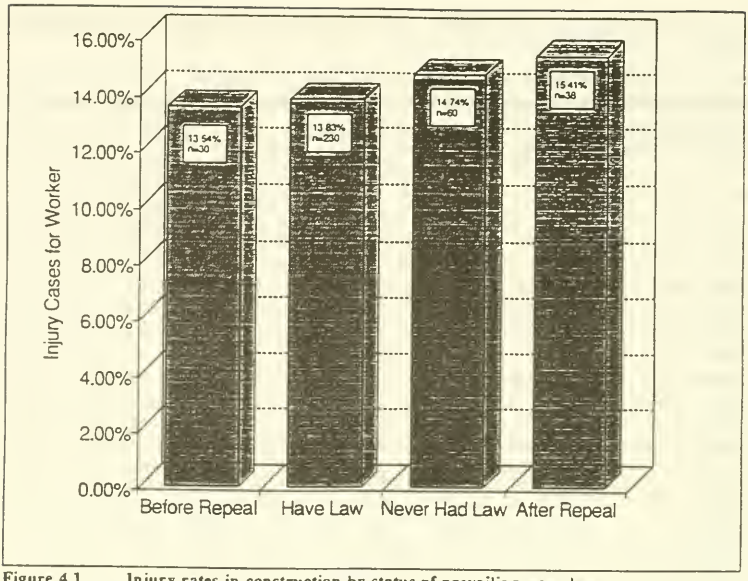

Figure 4.1 Injury rates in construction by status of prevailing wage law
Source: U.S. Department of Labor, BLS.

Injury rates in construction were relatively low in the nine repeal states prior to repeal (13.54 percent). After the various repeals, injury rates, on average, rose to 15.41 percent. In the 32 states that have retained prevailing wage laws, injury rates have been and remain relatively low. In nine states that have never had state prevailing wage laws, injury rates were and remain relatively high. The notation "n" refers to the numbers of state—year observations in each group. For instance, there were 230 state—year combinations for states that had prevailing wage laws in 1978-91.

or roughly $20 billion. This, for a construction labor force which represents but 5 to 6 percent of the whole U.S. labor force. In addition to the direct costs of workers' compensation, there are numerous industry-related indirect costs connected to work-related injuries or deaths. These include job shutdowns and retraining of workers.

According to the Construction Industry Institute, "even when the estimates of claims are deleted from cost data, indirect costs still exceed the direct costs."[78]

Based on the our regression model of the experience of the nine states that repealed their prevailing wage laws, we project that national injury rates[79] will increase by around 15% if the Davis-Bacon Act is repealed. What this will mean in terms of safety is:

- There will be 30,000 new cases of lost-time injuries each year, accounting for 675,000 days lost from work.
- Workers' compensation costs will increase by about $3 billion per year.
- Because Davis-Bacon construction accounts for approximately 10 percent of all construction, it is estimated that repeal of the Davis-Bacon Act would increase federal construction costs by $300 million per year in direct, workers'-compensation-related costs alone, and indirect costs would double this figure.

The numbers might prove larger, because a Davis-Bacon repeal in the wake of state repeals may have a larger impact on the construction industry.

Summary

The institutional context of work is critical to worker health and safety. State prevailing wage laws, on the surface, have little to do with worker health and safety. But such repeal has fundamentally altered an institutional context that was more conducive to workplace safety.

Repeals of state prevailing wage laws, therefore, have had hidden effects. Because the bidding process becomes overheated; because contractors, as a group, take less responsibility for training and safety; because workers feel less secure on the job; and because the workforce becomes less attached to and experienced with construction work; construction becomes more dangerous. Safety in an already relatively dangerous industry is put at risk by the repeal of prevailing wage laws.

V. Conclusion

The Effects of the Repeal of Prevailing Wage Laws

The federal system of government in the United States is sometimes called "democracy's workshop." The diverse experiences of the 50 states afford a valuable window for assessing the successes and failures of public policies. Between 1979 and 1988, nine states repealed their prevailing wage laws regulating the construction of public works. These legislative changes enable us to examine the before-and-after pictures of the effects of such repeals. Nine other states never had prevailing wage laws governing public construction, while the remaining thirty-two states retained prevailing wage laws. These "never-had" states and "retaining" states give us additional perspectives on what it means to keep or repeal prevailing wage laws.

Legislators are often forced to act on theory; this is one instance where they can act on facts and experience. The experience of the last 20 years in the application and removal of state prevailing wage laws on public construction offers insight into the prospective effects of further state repeals or the proposed repeal of the federal Davis-Bacon Act.

The Goals of State Prevailing Wage Laws

Prevailing wage laws were first enacted at the state level. Kansas passed the first prevailing wage law on public works in 1891 as part of legislation mandating the eight-hour work day. Prevailing wage laws were central to a larger effort to improve working conditions for American citizens. The notion was that child labor laws should enable children to be in school and the eight-hour work day should help allow workers time to spend with their families.

The proponents of prevailing wage legislation wanted to prevent the government from using its purchasing power to undermine the wages of its citizens. It was believed that the government should set an example, by paying the wages prevailing in a locality for each occupation hired by government contractors to build public projects.

Before the Great Depression, Arizona, Idaho, Kansas, Massachusetts, Nebraska, New Jersey, New York, and Oklahoma passed prevailing wage laws regulating state building and road construction. In 1931, Congress passed the Davis-Bacon Act. Soon thereafter, 18 additional states adopted prevailing wage laws. After World War II and until 1982, 15 more states passed prevailing wage laws. All of these laws raised the question: what was meant by a prevailing wage?

The Definition of a Prevailing Wage

Wages in local labor markets often have a peculiar distribution. Particularly where there are unions, but also in other circumstances, the highest wage in a local labor market is often the most commonly found wage rate. Even when the highest wage occurs most often, however, it will not be the average wage simply because the lower wages — however few or many — for that occupation will bring the average wage down.

Prevailing wage laws are intended to get the government out of the business of pulling down

wages. The dilemma is that if the state pays the average wage, it will automatically undercut the most commonly found wage. Alternatively, if government pays the highest wage found, it will always be pulling the average wage up. When is the highest wage sufficiently common that it should be called the prevailing wage rate, even though it will never be the average wage?

In the federal law, this dilemma was resolved by a threshold rule. This rule stated that if the most commonly found wage rate, to the penny, accounted for more than 30 percent of all wages for an occupation in a local labor market, that was the prevailing wage even though it was not the average wage. On the other hand, if the most commonly found wage rate accounted for less than 30 percent of all wages for an occupation in a local area, the average wage rate prevailed.

In 1985, the Reagan administration revised the rule and raised the threshold to 50 percent. Today, Davis-Bacon wage rates are the average rate for an occupation in a local labor market except, in roughly one-third of the cases, where 50 percent of the wages in that area are precisely the same. If more than half of all workers in an occupation in an area make the same wage, that wage rate — even if it is above the average — is said to prevail. But two-thirds of the time the average wage prevails.

Modern opposition to prevailing wage laws is usually founded on one of two objections. Some people oppose the idea of the government agreeing in advance to pay the average wage rate for workers in specific occupations in a local area. This criticism is completely at odds with the original purpose of prevailing wage legislation, which was to prevent the government from hiring labor at below-standard rates. Other critics object to paying a prevailing wage that is greater than the average wage in the locality. The premise of this second objection has lost a great deal of its force in recent decades. As a result of the adoption of the 50 percent threshold, and the additional fact that unionization in the construction labor market has fallen from 70 percent to about 25 percent in the last three decades, there are far fewer cases in which the wages rates determined as prevailing are greater than the average rate.

The Financial Costs of State Repeals

Lower wages for all construction workers. Supporters of Utah's 1981 repeal of its prevailing wage law recognized that repeal would lower construction wages. They maintained, however, that the money saved on public works construction justified the government's indirectly lowering the wages and earnings of some of its citizens. And, indeed, construction earnings did fall. In Utah, construction workers, who through the 1950s, 1960s, and 1970s earned 120 to 130 percent of the average non-agricultural wage in the state, saw their wages fall steadily after repeal. By 1993, Utah construction workers were earning only 103 percent of the average annual earnings in Utah, even though Utah was then experiencing a massive construction boom, in which construction wages normally go up. This earnings decline affected all Utah construction workers — whether union or non-union, whether employed on publicly or privately financed projects.

Taking the nine repeal states as a whole, the average annual earnings of construction workers in these states fell from $24,317 (in 1991 dollars) per year before the repeals to $22,148 after the repeals. This is simple but compelling evidence that repeals of state prevailing wage laws have lowered construction wages.

A more complex analysis confirms this general observation. Using multiple linear regression analysis, we isolated the earnings effects of the state repeals while controlling for the business

cycle, regional differences in wages and unemployment, and long-term trends in earnings and employment that are not associated with repeals of prevailing wage laws. We found that the nine repeals cost construction workers in those states $1,477 (in 1994 dollars) per worker every year since state repeal. This was about a 5 percent drop in construction earnings attributable to each state's repeal of its prevailing wage law on public works.

A slight increase in construction employment. Proponents of state repeals maintained that the lowering of wages would be offset by an increase in construction employment. While high-paid, high-skilled workers would be hurt by a repeal, it was believed, low-paid, low-skilled workers would have more job opportunities in construction.

Repeal proponents were right that cheaper construction labor would lead to an increase in construction employment. Again using regression analysis, we found that the repeal states experienced a 1.7 percent increase in construction employment that would not have occurred without these repeals. This was an unfavorable trade-off from the standpoint of workers, however, as their wages fell by 5 percent overall while their employment rose by less than 2 percent. It turned out to be a tough trade-off for government budget-watchers as well.

Lost tax revenues. As a group, construction workers lost income, because their wages dropped by 5 percent and their total employment rose by less than 2 percent. This caused the government to lose substantial tax revenues. In recent years, the state of Utah has lost $3 million to $5 million annually in sales tax and income tax revenues because it repealed its prevailing wage law in construction.

Increased construction cost overruns. Cost overruns are a hidden cost of repealing prevailing wage laws. In Utah, the overruns in Utah resulted from an over-heated bidding process in which contractors, uncertain about each other's labor costs and confronted with the entry of many start-up construction companies, shaved their bids in a desperate effort to obtain government contracts. After the repeal, winning bids on state jobs came in lower than ever before, but the final job costs were a higher percentage of original estimates than ever before (chapter 2, fig. 2.3). Having underbid jobs, contractors and subcontractors would arrange change orders to get the jobs done or simply walk away from badly underbid jobs and leave the state to pick up the pieces. In Utah, cost overruns on the construction of state roads tripled in the 10 years after repeal, compared with the 10 years before.[80]

The bottom line for Utah's budget. The Congressional Budget Office estimates that, should the federal Davis-Bacon Act be repealed, the federal government might save a total of 1.7 percent on its construction costs. This savings might even be less.[81] Using an even more conservative figure of 3 percent to estimate what Utah saved in construction costs by repealing its prevailing wage law, we calculate that the Utah state budget almost — but not quite — broke even. Balancing construction cost savings against lost tax revenues, in two of the years since 1987 the Utah budget saved more money in construction costs than it lost in tax revenues. In five of the years since 1987, the state lost more in tax revenues than it saved in construction costs (fig. 5.1). In either case, the net savings or losses were small compared with the lost earnings of Utah's citizens (table 2.6, row 3). But construction workers — and the industry — were to lose more than money when these repeals were enacted.

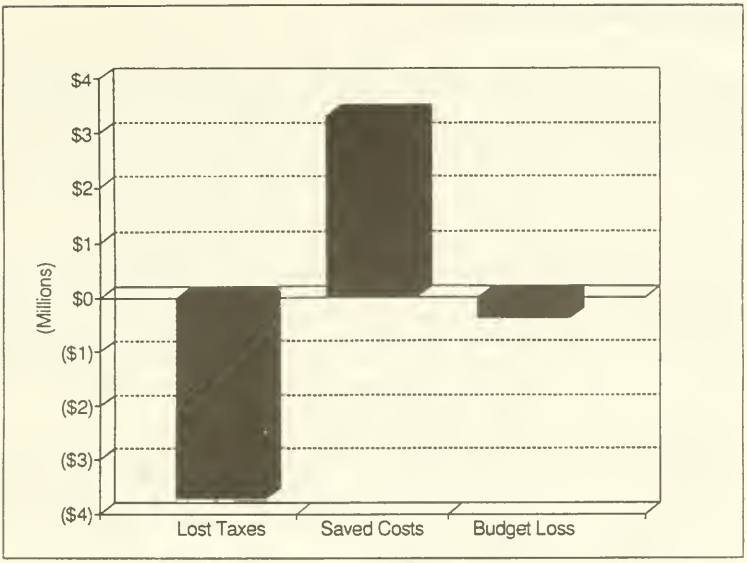

Figure 5.1 Average annual income-tax revenue loss and construction cost savings and net effect of repeal for Utah, 1987 to 1993, in 1994 dollars
Source: Table 2.6.

On average, the repeal of Utah's prevailing wage law has cost the state budget $400,000 per year from 1987 to 1993. This figure has been rising and reached $1 million in 1993. Should the federal prevailing wage law be repealed, the gap between lost federal tax dollars and construction cost savings will be greater. This is partly because a Davis-Bacon repeal would affect more construction and more workers, but also because the federal government income tax rate is higher than Utah's. The higher the income tax rateare taxed, the greater the taxes if incomes fall.

Other Costs of State Repeals

A less-skilled labor force. Unions and union contractors do the lion's share of worker training in the construction industry. Some very large non-union contractors do their own training, but most non-union contractors hire out-of-work union-trained construction workers and workers who have learned a trade on a catch-as-catch-can basis. Most non-union contractors are not big enough to afford to train and retain their own labor force. Contractors, understandably, are afraid that in the first slack period, the workers they trained will leave them and work for their competitors. Unions historically have compensated for this market failure by inducing union contractors to share the burden of training and to share each other's apprentices.

In Utah, the repeal of the prevailing wage law led to a dramatic decline in union apprenticeship programs because the repeal led to a dramatic decline in local construction unions. Having repealed the prevailing wage law, the state was not inclined to pour money into local community colleges and vocational training centers to make up the difference. At first after the repeal in 1981, the Utah construction economy limped along in the trough of a business cycle so the absence of quality training systems was not strongly missed. Non-union contractors hired out-of-work union members and the older generation of construction workers provided a relatively skilled labor force in the open shop of non-union construction.

In the last three years, however, Utah has experienced a massive construction boom. Few training systems were in place to meet this boom. Utah has filled the gap by relying on traveling construction workers from California, which is in a construction slump. Utah has also relied on a less-skilled labor force. Whether Utah will be able to continue to rely on California workers remains to be seen; if California's economy picks up, many of the skilled California travelers will likely return home to the increased wages there.

Utah's experience with declining availability of construction training was not unique. Comparing the decade before repeals to the decade after repeals, union and non-union apprenticeship rates in construction fell by more than half in the nine states that repealed their prevailing wage laws. States that retained their prevailing wage laws did not lose ground in apprenticeship training and states that never had prevailing wage laws had relatively low training rates in construction throughout the period.

The repeal of prevailing wage laws thus had the indirect effect of reducing training and hindering the formation of a skilled labor force. When unions declined in the wake of repeal, only state government could have picked up the pieces. The cost of expanded state-financed vocational training is a hidden cost of repealing prevailing wage laws. So far, it is a hidden cost that few repeal states have been willing to pay.

Slowed economic gains by minority workers. A faltering stock of human skills in construction is not the only nonmonetary cost that resulted from state repeals of prevailing wage laws. Construction used to be one of the few blue-collar occupations left where a worker lacking a college education could earn a middle-class income. Nationwide, the average construction income in 1994 was $27,500. Becoming a skilled construction worker was a road out of poverty for minority workers. Before the nine state repeals, participation by minority group members — male and female nonwhites — in construction apprenticeships mirrored the minority populations in each state.

In the repeal states before the repeal of their prevailing wage laws, minorities accounted for

almost 20 percent of all construction apprentices. After repeal, minority participation fell to 12.5 percent of all construction apprentices. Thus, after these repeals, minorities became significantly under-represented in construction apprenticeships.

One reason for this decline is that union apprenticeship programs usually enrolled dozens of apprentices. Non-union apprenticeship programs tied to single employers tended to be smaller, often involving no more than one, two, or three apprentices. Affirmative action regulations do not cover apprenticeship programs of fewer than five apprentices. So the union programs had to fill out affirmative action plans and follow affirmative action guidelines, while the smaller programs did not.

When the repeals drove the union programs into decline, minority workers lost the most. For instance, the percentage of minority apprentices in construction, which reflected the minority proportion in each state's state population before repeal, declined in the repeal states (fig. 5.2). Minority construction workers may still enter the industry but they are less likely to receive full formal training in the absence of prevailing wage legislation. Although it has been suggested that repeal of Davis-Bacon would lower black unemployment relative to white unemployment by opening up jobs for less-skilled black labor,[82] the data do not support such a claim (see chapter 3, figs. 3.3 and 3.4).

Thus, repeal means that minority workers will begin construction work in unskilled jobs and get their training, if at all, on a catch-as-catch-can basis. Furthermore, minorities will enter an industry that is less able to provide a secure blue-collar, middle-class income. Repealing prevailing wage laws has therefore cut off an important road for minorities into the middle class. Without skills training, workers are less productive; without safety training, they are at greater risk of injury in an already dangerous profession.

Increased work-related injury rates. All construction workers in the nine repeal states have been put at increased physical risk by the repeal of the several state prevailing wage laws. Injury rates in construction in the nine repeal states have risen by 15 percent after repeal, even controlling for other factors such as unemployment, trends in construction safety, and differences in work safety experiences by region. This finding is consistent with other research. The Department of Labor found that the rate of injuries "decreases substantially as length of service increases."[83]

If the experience in these states can be extended to the nation, a repeal of Davis-Bacon would result in 76,000 additional construction workplace injuries annually. About 30,000 of these injuries would be serious, requiring time off to recover. More than 675,000 work days would be lost. These new injuries would occur because workers would be less well-trained and because they would have fewer on-the-job protections against contractors who are in a hurry.

Workers, of course, suffer directly from these occupational injuries — in their physical well-being and in their wallets. Increased injury rates also lead to increased costs for contractors, who must pay higher worker's compensation premiums. And, as consumers of construction services, local, state, and federal governments pay a share of those higher worker's compensation premiums.

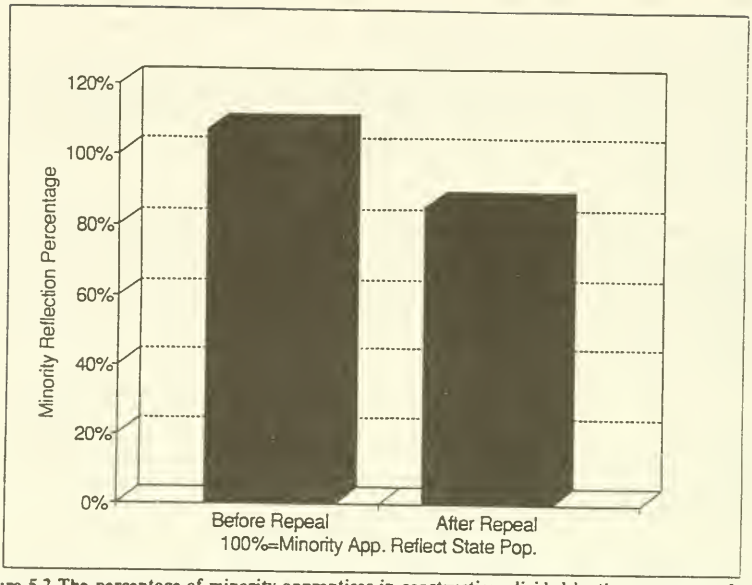

Figure 5.2 The percentage of minority apprentices in construction, divided by the percentage of minority population in the state — the minority reflection percentage — for nine repeal states
Source: Table 3.8.

In the nine repeal states where separate data were available on minority populations, in the decade before repeal, minority apprentices were slightly over-represented relative to their proportion of the state population. The minority reflection percentage was 107 percent. In the decade after the repeals, the minority reflection percentage fell to 85 percent, indicating significantly under-represented minorities.

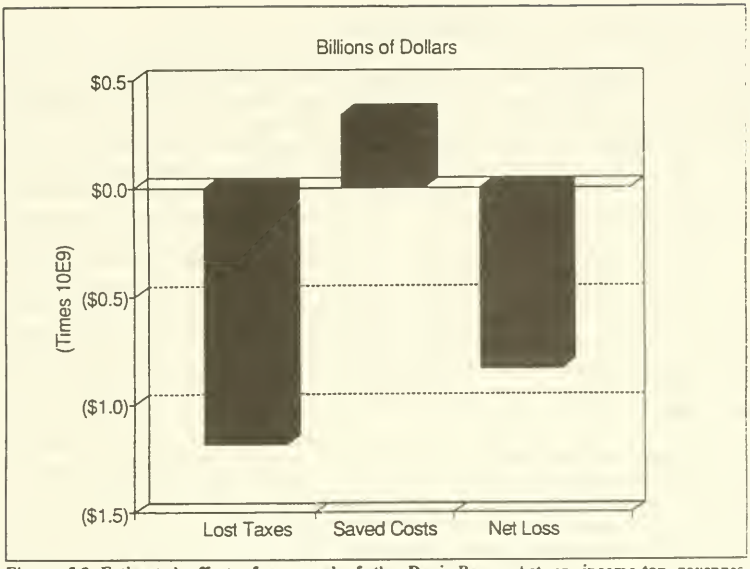

Figure 5.3 Estimated effect of a repeal of the Davis-Bacon Act on income-tax revenues, construction costs and total budget
Source: Table 2.7.

The Congressional Budget Office estimates that the federal government would save a total of 1.7 percent in construction costs from a repeal of Davis-Bacon. This chart uses the more conservative cost savings estimate of 3 percent. At a 3 percent construction cost savings, with a marginal income tax rate of 20 percent and federal construction expenditures at their 1991 level (in 1994 dollars), a repeal of Davis-Bacon would cost the federal government $1.2 billion in income tax revenues. The federal government would save $346 million in construction costs and the federal budget would lose, on net, $838 million.

Estimated Effect of A Davis-Bacon Repeal

Democracy's workshop has given us an opportunity. The nine states that repealed their "little" Davis-Bacon Acts offer a chance to estimate the likely consequences of the repeal of the federal Davis-Bacon Act. Based on this study, we project the following.

First, construction earnings would drop if the federal law was repealed. Collectively, for all construction workers, this would mean a loss of almost $5 billion per year in real terms every year. As a result of lower wages in construction, federal income tax collections would fall by roughly $1 billion per year. Projected cost savings on federally purchased construction almost certainly would be less. (fig. 5.3).

Second, we estimate that formal training in construction could fall by 40 percent. The industry would move from one of skilled blue-collar workers earning a middle-class income to a much-less-skilled labor force earning substantially lower wages. Minority access to good training likely would fall even farther than overall training rates. Contractors would be using more construction workers and paying less for them, but the less-skilled workers would be building less and adding less value to building projects. Purchasers of construction services would not necessarily profit from lower-wage labor if that labor is also less skilled. This is a potential lose-lose situation.

Utah was able to patch together a large-enough construction labor force after its repeal of prevailing wage law. Contractors in Utah rode freely on the training systems in place in California. But the country as a whole cannot go on a similar free ride. If Davis-Bacon is repealed and construction training nationally declines sharply, the United States will not be a small state like Utah turning to California for its rescue. Nationally, there will be no place to turn. Is the federal government prepared to spend the money to establish its own apprenticeship programs in construction? Alternately, will the government induce or require contractors to join into cooperative training programs? If prevailing wage legislation is repealed, it is likely that some additional measures will be needed to ensure occupational training for the construction industry.

Last, but not least, we estimate that the construction job site would produce 30,000 additional serious injuries yearly. These injuries would add a large but still-undetermined financial cost to the ultimate price of repeal.

It goes without saying that the public benefits from a bidding process that lowers construction costs. But the bidding process must be kept within certain bounds, to prevent consequences that could lead to increased — rather than decreased — public and societal costs. Competitive pressures tempt contractors to cut corners on quality. States and communities employ building inspectors to assure that quality is maintained. Historically, unions have assumed the role of "building inspector" for safety and training in the construction industry.

The role of unions. Employment in construction is inherently unstable because the industry fluctuates cyclically and seasonally. Firms expand and contract employment as they win and lose job bids. A worker rarely has a long-term attachment to one employer in the industry, and the construction union may be the only stable, work-related institution the worker knows. Construction unions act like a flywheel in the industry, creating career opportunities out of a casual labor market. Unions do this by facilitating the movement of journeymen from employer to employer and minimizing the employers' transaction and screening costs.

Unions lower training turnover by providing a way for employers and journeymen to rationally invest in the human capital of apprentices. Collectively bargained agreements create wage incentives for apprentices to stay with training programs, and also cause their employers to promote the workers' passage to journeyman status. Unions also encourage the career attachment of trained journeymen by providing relatively high wages and health and retirement insurance, which is increasingly attractive to workers as they age. By creating career jobs in a casual labor market, unions create the institutions needed to make human capital investment a rational market activity.

With the lowering of construction wages, young construction workers will limit the amount of human capital they invest in themselves. With a lower stake in construction skills and the disappearance of wages in the form of health and old-age insurance, it becomes more reasonable for many journeyman construction workers to abandon construction work entirely when they start families. This is an additional loss of built-up human capital.

The loss of a career. Contractors have attempted to minimize the effect of this increased skill volatility in the industry by encouraging attachment of workers to their firms. Still, despite initiatives such as profit-sharing, 401K plans, and health insurance to bind key workers to the firm, construction firm turnover remains high. It appears that the decline of unions has been associated with the decline of the career worker in construction, a diminution in incentives to invest in construction skills, and an increasing loss of accumulated human capital as apprentices and journeymen leave the trades.

The loss of human capital and career jobs in this industry does not appear as a private cost on the ledgers of any single contractor. Nonetheless, the industry and society at large pay a price for the loss of middle-class occupations in construction. Not only is quality in the industry at risk when human capital stocks are allowed to dwindle, but the quality of our society is imperiled when we dismantle the institutions that generate stable employment out of unstable working conditions.

* * *

The construction industry is turbulent. Caught in a perennial boom-bust cycle, characterized by fleeting relationships between small contractors and subcontractors, and driven by short-term strategies of free-riding on the training of others, the construction industry is a market failure waiting to happen. The turmoil in the construction labor market has traditionally been tempered by prevailing wage legislation and labor unions. Absent these institutions, it is unclear how — or whether — the market will regularly and carefully train workers, or assure safety and health on the job site, or provide training opportunities for minority workers, or offer the incomes needed to make construction an attractive career. Government purchases account for 20 percent of all construction in the United States. For the last six decades and more, the government has contributed to the stability in construction labor markets by requiring contractors to pay the wage rates that already prevail in a local areas. Today, voices are urging the government to use its purchasing powers to reduce construction costs at the expense of worker incomes. Such a strategy has a very real cost for workers, the industry, and the government. When nine states chose this path, the results were significantly lower construction wages, slightly higher construction employment, a tripling of cost overruns on public works, an across-the-board 15-percent increase

in construction injuries, a 40 percent decrease in apprenticeship training, and an even further decline in minority apprenticeship training. All this was sacrificed to save an estimated 1.7 percent in state construction costs. Even that savings was squandered by the loss in state tax revenues from an impoverished construction labor force — a poor bargain indeed.

End Notes

1. *Topeka State Journal*, February 24, 1891, col 4. p. 4.

2. *Topeka Daily Capital*, February 25, 1891, p.1.

3. *Topeka State Journal*, February 25, 1891, col. 3-4, p.1.

4. *Sixth Annual Report of the Bureau of Labor and Industrial Statistics*,126.

5. *Sixth Annual*, 215.

6. *Sixth Annual*, 124.

7. L. 1891 Ch. 114 p.192-193.

8. In reply to the question of needed legislation, most workers polled by the Kansas Bureau of Labor and Industry, cited a lack of enforcement of the eight-hour law or complained of long hours. (Twelfth Annual Report of the Kansas Bureau of Labor and Industry Statistics, 1896, 88-89.) Similarly, the Kansas Bureau of Labor and Industrial Statistics reported complaints of noncompliance with the eight-hour law. P.E. Cook, of the A.R.U. Local No.57, stated that the "[eight hour] law is being openly violated by the corporate and private parties on public work...." (Fourteenth Annual Report of the Kansas Bureau of Labor and Industry Statistics, 1898, 204.)

9. *Sixteenth Annual Report*,272-78. From July 1900 to June 1901, 33 cases were won upholding the law.

10. *Thirteenth Annual Report of the Bureau of Labor Statistics of the State of New York*, 1895, 515-37; *Fourteenth Annual Report of the Bureau of Labor Statistics of the State of New York*, 1896, 802.

11. U.S. Congress, 1927. Although it has recently been asserted that the Alabama workers were black, there is no direct evidence supporting this claim. (See George F. Will, "It's time to repeal the Davis-Bacon Act," *Deseret News*, Feb. 5, 1995.)

12. *Hearings Before the Committee on Labor, House of Representatives-Seventy-First Congress.* January 31, 1931. Bacons proposal was re-introduced in 1930 as H.R. 9232 by Congressman Elliot W. Sproul from Illinois, while Bacon proposed a complementary bill.

13. Armand J. Thieblot Jr., *Prevailing Wage Legislation:The Davis-Bacon Act,State "Little Davis-Bacon Acts, The Walsh-Healey Act, and The Service Contract Act.* Philadelphia: The Wharton School,1986, p. 8.

14. Laws of Florida 1979 ch79-14 HB730.

15. Thieblot, 163.

16. Laws of Alabama 1979 Act no. 79-123 H362 Letson.

17. Thieblot, 151.

18. Mark Erlich, *Labor at the Ballot Box: The Massachusetts Prevailing Wage Campaign of 1988* (Philadelphia: Temple University Press, 1989), 33.

19. Nelson, Richard R. "State labor legislation enacted in 1981" U.S. Department of Labor Employment Standards Administration Division of State Employment Standards,1.

20. *Salt Lake City Tribune*, Jan. 23, 1981, B2.

21. *Salt Lake City Tribune* January 23, 1981 B2.

22. *Salt Lake City Tribune* Jan. 16, 1981, A6, col 1.

23. *Salt Lake City Tribune*, January 16, 1981 (A6, col 1).

24. Arizona laws 1984 S.C.R. No.1001.

25. *The Phoenix Gazette*, "Little Davis-Bacon Act is Ruled Unconstitutional," Sept. 12, 1979, p. A-1.

26. Thieblot, 12.

27. Idaho Session Laws Ch 3 HB7.

28. Thieblot, 165.

29. Colorado Revised Statutes 1985 Article 16,8-16-101.

30. Thieblot, 159-60.

31. New Hampshire Ch 117(SB71).

32. Thieblot, 184.

33. Kansas Ch 186 S.B.112.

34. Louisiana Act No.18 H.B.2.

35. Erlich, 4 and 6.

36. Erlich, 7.

37. Regional Information Group of Data Resources, "Executive Summary of the Study of the Economic Impact of Repeal of the Massachusetts Prevailing Wage Law" Lexington, MA, August 1988.

38. The Massachusetts Foundation for Economic Research, *The Peculiar Prevailing Wage Law* (111 Cabot Street Needham, MA 02194), March 1988.

39. Massachusetts Foundation for Economic Research, 10.

40. Data Resources, 1.

41. Data Resources, 4.

42. Erlich, 101, 111, and 112..

43. Senator Harrison Williams, United State Senate Hearing Before the Subcommittee on Housing and Urban Affairs, *First Session on Oversight to Examine the Administration of the Davis-Bacon Act*, Washington:GPO,1979, 1-2.

44 With the increasingly prevalence of market-recovery agreements between unions and contractors, more often there are multiple union wage rates for a single occupation in a local labor market. This means that, even when unionization rates are above 50 percent, there is not always a single union wage rate that counts for 50 percent of workers in the market. Thus it is even less likely that the union rate will be the prevailing rate.

45. *Current Population Survey.*

46. Let us first investigate this issue using an example. Assume that union wages are $16.30 per hour and non-union wages are $10 per hour. When average wages decline by 7.5 percent, and if non-union wages remain the same, what is the percentage decline in union wages?

W_u	r_u	W_n	r_n	W_{avg}	7.5% overall decline in W_{avg}	Union Wage Percent Decline	Non-Union Wage Percent Decline
$16.30	0.13	$10.00	0.87	$10.82	$10.00		
$10.00	0.13	$10.00	0.87	$10.00		60.3%	0%

Where W_u is the union wage, r_u is the percentage of the construction workforce that is unionized, W_n is the non-union wage, r_n is the percentage of the construction workforce that is not unionized, and W_{avg} is the average wage in construction. This table shows that the percentage decline in union wages must be 60 percent.

47. Assume that non-union wages are $10 per hour and there is initially a wage differential of 20 percent between the union and non-union workers. This implies that the union wages are $12 per hour. If unions represent 13 percent of the construction labor force, average wages decline by 7.5 percent, and the wage differential is eradicated, what is th: percentage decline in non-union wages?

W_u	r_u	W_n	r_n	W_{avg}	7.5% decline in W_{avg}	Percent Decline in Union Wage	Percent Decline in Non-Union W.
$12.00	0.13	$10.00	0.87	$10.26	$9.49		
$10.00	0.13	$10.00	0.87	$10.00			
$9.49	0.13	$9.49	0.87	$9.49		21%	5.1%

The percentage decline in union wages must be 5 percent (from $10 per hour to $9.49 per hour).

48. Assume there is an initial wage differential of 20 percent between the union and non-union sectors. After the repeal of a prevailing wage law, assume the union—non-union wage differential decreases to 10 percent. Now let us investigate the effect of a 7.5 percent overall fall in wages. Assume that non-union wages are $10 per hour and the wage differential between the union and non-union workers falls to 10 percent. This means that the union wages are about $11 per hour. If average wages decline by 7.5 percent and the wage differential remains unchanged, what is the percentage decline in union and non-union wages?

W_u	r_u	W_n	r_n	W_{avg}	7.5% decline in W_{avg}	Percent Decline in Union Wage	Percent Decline in Non-Union W
$12.00	0.13	$10.00	0.87	$10.26	$9.49		
$11.00	0.13	$10.00	0.87	$10.13			
$10.31	0.13	$9.37	0.87	$9.49		14.1%	6.3%

The percentage decline in union wages is 14 percent (from $12 per hour to $10.31 per hour), and the percentage decline in non-union wages is 6 percent (from $10 per hour to $9.37 per hour).

49. Unless described differently, figures are given in 1991 dollar amounts.

50. The data are provided in four-digit detail of the Standard Industrial Classification(SIC) code. Data are from U.S. Department of Labor, Bureau of Labor Statistics, Office of Earnings and Employment Statistics, Data Analysis Section, Special Tape XC4057, provided by Darrell E. Carr.

51. "Secular" trends refers to trends in earnings that are not due to fluctuations in the business cycle nor due to the state repeals of prevailing wage laws.

52. Controlling for contractor type is a conservative procedure. Overall construction earnings may decline as a result of a shift in the mix of construction worker type. We are focusing on the decline of earnings within trades instead of any decline resulting from a shift in the mix of trades. Additional earnings losses may be calculated associated with a shift to a mix of less skilled workers. This is one reason why the regression estimate of earnings decline is lower than the simple estimate which does include the effect of changing crew mixes within the states construction industries. Unemployment rates are for each state for each year.

53. This is an annual earnings average by SIC group. When earnings are weighted by the number of workers in each group, earnings fall to slightly below $25,000.

54. *Technical details:* This regression model was tested on 27,778 observations. Control (dummy) variables for 26 detailed 4-digit standard industry code (SIC) classifications were included in the regression model but not reported in the table. Each coefficient reported in column (2) of the table is statistically significant except the control for the mountain states region. (This means that the estimated regional effect on annual construction earnings for the mountain region of -$79 is small and probably not different from zero.) The unemployment rates for 1991 for the example states shown in table 2.3 were 4.9 for Utah, 5.0 for Georgia, and 5.9 for Maryland. The model is a generalized least-squares weighted regression with the weight being the square root of the annual average employment in each SIC industry for that year. The R^2 is 0.73, which means the model is a good fit of the data.

55. The model also estimates a negative effect on annual earnings of $1173 associated with raising the threshold for construction contracts covered by a prevailing wage law to $500,000 or more. This suggests that at some point raising the threshold has a similar effect to repealing the law altogether. However, this result is based on experience from only two states, Maryland with a $500,000 threshold and Oklahoma with a $600,000 threshold. We could not find negative effects on earnings from lower thresholds in the $100,000 to $400,000 range which leads us to be cautious about this result. A conservative interpretation of this result may be that thresholds below $500,000 have a minimum impact on construction earnings while thresholds above $500,000 have progressively negative effects on earnings.

56. The Standard Industrial Classification (SIC) code for construction consists of detailed categories of general contractors such as commercial and residential general contractors, detailed categories of heavy and highway contractors, and detailed categories of specialty subcontractors such as masonry and carpentry.

57. Robert D. Reischauer, Congressional Budget Office Testimony, before the Subcommittee on Labor Standards, Occupational Health and Safety, Committee on Education and Labor, U.S. House of Representatives, May 4, 1993, p. 4.

58. Robert D. Reischauer, Congressional Budget Office Testimony, before the Subcommittee on Labor Standards, Occupational Health and Safety, Committee on Education and Labor, U.S. House of Representatives, May 4, 1993, p. 4-5.

59. U.S. Department of Labor, Bureau of Statistics, Employment and Earnings, December, 1994, Table B-3 for November 1994, p. 55.

60. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Government Finances, 1990-91, Series GF/91-5, Table 8, column 6, p. 9.

61. Some of the material in this chapter concerning the Utah case originally appeared in Hamid Azari-Rad, Peter Philips and Anne Yeagle, "The Effects of the Repeal of Utah's Prevailing Wage Law on the Labor Market in Construction," in Sheldon Friedman, et al., eds., *Restoring the Promise of American Labor Law*, Cornell University, ILR Press, Ithaca, New York, 1994, 207-22.

62. These data are based on quarterly per capita dues contributions to the Utah AFL-CIO Building and Construction Trades Council. These payments underestimate union membership because of under-reporting of membership from participating locals as well as other exemptions and withdrawals of locals.

63. George F. Will, "It's time to repeal the Davis-Bacon Act", *Deseret News*, February 5, 1995.

64. Indeed, an unreported multiple linear regression model tested whether changes in the male black-white unemployment ratio could be associated with state repeals of prevailing wage laws or the fact that a state never had such a law. This model controlled for time trends in the male black-to-white unemployment ratio, regional differences in unemployment ratios, and changes in the level of unemployment. While the model found a strong time trend in the black-to-white unemployment ratio and significant regional differences in the ratio, there was no statistically significant relationship between either the repeal of prevailing wage laws or the complete absence of prevailing wage laws and the black-to-white unemployment ratio. In short, there is no statistical connection one way or the other between the status of prevailing wage laws and the relative unemployment of blacks and whites.

65. These state demographic unemployment rates are from U.S. Department of Labor, Bureau of Labor Statistics, *Geographic Profile of Employment and Unemployment*, 1974 to 1992.

66. Data available on request.

67. Utah Department of Employment Security, Labor Market Information and Research, *Annual Report of Labor Market Information*, 1993, table 5, Salt Lake City, 1994.

68. Hamid Azari-Rad, Peter Philips and Anne Yeagle, "The Effects of the Repeal of Utah's Prevailing Wage Law on the Labor Market in Construction," in Sheldon Friedman et al.,eds., *Restoring the Promise of American Labor Law*. Cornell University, ILR Press, 1994, 207-22.

69. U.S. Bureau of the Census, 1970 *Census of Population*.

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