

Letters for the record from groups opposing H.R. 3808

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4. International Union of Painters and Allied Trades (IUPAT)
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 - b. Alliance for Justice
 - c. American Association for Justice
 - d. Asbestos Disease Awareness Organization
 - e. Center for Justice & Democracy
 - f. Connecticut Council on Occupational Safety and Health (ConnectiCOSH)
 - g. Consumers for Auto Reliability and Safety
 - h. Earthjustice
 - i. Farmworker Association of Florida, Inc.
 - j. Homeowners Against Deficient Dwellings
 - k. Impact Fund
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 - m. International Brotherhood of Boilermakers
 - n. International Federation of Professional & Technical Engineers (IFPTE)
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 - p. Maryland Latino Farmers & Ranchers Trade Association
 - q. Metal Trades Department, AFL-CIO
 - r. National Association of Consumer Advocates
 - s. National Congress of Black Women, Inc.

- t. National Consumers League
- u. National Employment Law Project
- v. National Employment Lawyers Association/New York
- w. National Federation of Federal Employees
- x. National Latino Farmers & Ranchers Trade Association
- y. New York State AFL-CIO
- z. New York Public Interest Research Group (NYPIRG)
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- ff. United Association of Plumbers, Pipefitters, Welders and Service Techs
- gg. Woodstock Institute
- hh. Workplace Fairness

January 29, 2018

The Honorable Bob Goodlatte Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler, Jr. Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: Groups Strongly Oppose H.R. 3808, the Infrastructure Expansion Act of 2017.

The undersigned organizations are writing in opposition to H.R. 3808, the Infrastructure Expansion Act of 2017, which would prohibit states from establishing strict liability standards for certain construction accidents. This bill would be an unprecedented intrusion into state liability law. Its scope is vast, covering any such "project for which Federal financial assistance is used, directly or indirectly." These terms are undefined and vague, but a common sense reading suggests they are meant to cover far more worksites than just those receiving federal grants.

Construction is one of the most dangerous jobs in the nation. Currently, states like New York insist on strict liability for contractors and owners when it comes to sites covered by this bill, that is, those "with an elevation or gravity related risk occurring on that project." This is because New York has determined that those controlling safety at a construction site should be exclusively responsible for ensuring safety and limiting hazards. New York has done this to protect not only workers from unsafe scaffolding, ladders, flooring, elevators and other hazards, but also pedestrians walking on sidewalks and streets where there is active construction.

But even in New York, an accident alone does not establish liability. A defendant cannot be held liable unless they have violated a required safety standard. They cannot be held liable if an accident was solely caused by the worker's negligence (i.e., being intoxicated at work, etc.). In other words, New York has carefully developed its law over decades, balancing interests to both encourage safety and provide proper remedies for those who have been hurt.

H.R. 3808 directly tramples on a state's right to decide what's best for its workers and residents regarding the responsibility of local contractors and building owners to ensure safe construction sites. It would overturn traditional state common law and interfere with a state's right to establish tort remedies, one of the most basic and traditional of state functions. Please oppose this harmful legislation. (For more information, please contact

Joanne Doroshow, Center for Justice & Democracy at New York Law School,
joanned@centerjd.org). Thank you.

Sincerely,

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American Association for Justice
Asbestos Disease Awareness Organization
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Connecticut Council on Occupational Safety and Health (ConnectiCOSH)
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Public Citizen
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Texas Watch
Woodstock Institute
Workplace Fairness



**BUILDING &
CONSTRUCTION
TRADES COUNCIL
OF GREATER NEW YORK**

GARY LaBARBERA
PRESIDENT

AFFILIATED WITH THE
BUILDING CONSTRUCTION TRADES DEPARTMENT
OF WASHINGTON D.C.

BUILDING AND CONSTRUCTION TRADES COUNCIL
OF NEW YORK STATE

AMERICAN FEDERATION OF LABOR OF CONGRESS
OF INDUSTRIAL ORGANIZATION

To the Honorable Members of the House of Representatives Committee on the Judiciary:

As representatives of construction workers, we express strong support for New York's Scaffold Safety Law and urge that HR 3808's provision to preempt its application to construction projects that include federal subsidy should be rejected.

For over a century the New York legislature has protected New York's construction workers by way of a safety law that has protected those working at heights on skyscrapers, bridges and other tall and dangerous structures.

The law is straightforward and reasonable. It requires owners and contractors who control worksites to provide specified safety equipment for workers to use. If owners and contractors comply with the law the burden shifts to the worker to use the safety equipment so provided. Owners who comply with the law are completely protected from claims. Workers who fail to use safety equipment provided by owners and contractors cannot bring a valid claim.

Working at elevation is already a dangerous profession, but when contractors fail to comply with basic safety precautions, it is a recipe for construction worker deaths and severe injuries that devastate families. And in New York, the land of skyscrapers, protecting laborers at high elevations is a priority.

The legislature has considered the positions of those who oppose the law and has determined year after year that the law in its present form is what's best for purposes of protecting families so that workers can return to their loved ones at the end of a hard day's work without injury or death.

Respectfully, the law has worked and continues to work and New York's right to legislate safety laws should be reserved to New York just as all states should enjoy such states' rights.

Sincerely,

Gary LaBarbera





Mario F. Cilento
President

Terrence L. Melvin
Secretary-Treasurer

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September 21, 2017

The Honorable Jerrold Nadler
United States House of Representatives
2109 Rayburn House Office Bldg.
Washington, DC 20515

Dear Representative Nadler:

Members of Congress are charged with trying to improve the lives of their constituents, yet once again, Representative Faso has introduced legislation that specifically disadvantages his own hardworking constituents and workers across the state.

The so-called "Infrastructure Expansion Act," announced earlier this week under the guise of expanding federal funds for New York State infrastructure, should be seen for exactly what it is - a rollback of safety protections for hardworking New Yorkers. The legislation seeks to bolster developer and contractor profits at the expense of the well-being of working men and women.

Unable to achieve this troubling goal at the state level, some contractors and Representative Faso are seeking an end around of their own state's law. The worker protection they are targeting is the Scaffold Safety Law. This vital safety provision in State Labor Law (Section 240) helps save lives by ensuring that workers who are injured as a result of fall-related incidents have access to legal recourse by holding project owners and contractors accountable if they fail to take necessary steps to ensure workplace safety. The rationale is simple; they are in the best position to ensure safe workplaces.

Construction, particularly work at heights, is extremely dangerous. One workplace death is too many, but some parts of the state, New York City for example, have seen an epidemic in construction deaths. The last thing we can afford to do is roll back one of the few workplace protections workers and their families do have. In fact, we should be doing even more.

We understand that developers and contractors want to earn more money, but that simply can never come at the expense of the lives and well-being of the very workers without whose blood and sweat, they would make no profit at all.

On behalf of the New York State AFL-CIO's 2.5 million union members, retirees and their families, I urge you to oppose the ill-conceived "Infrastructure Expansion Act," which imperils worker safety by circumventing state law. Should you have any questions, please contact State AFL-CIO Political Director Ryan Delgado at 518-436-8516 or rdelgado@nysaflcio.org.

Sincerely,



Mario Cilento
President

MC:ac
opeiu-153

cc: Representative John Faso



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General President

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ONE AGENDA

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INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES AFL-CIO

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The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jerry Nadler
Ranking Member
Committee on the Judiciary
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Subject: **Oppose H.R. 3808**

Dear Chairman Goodlatte and Ranking Member Nadler:

On behalf of the members of the International Union of Painters and Allied Trades, I write in strong opposition to H.R. 3808, the so-called Infrastructure Expansion Act, introduced by Congressman John Faso.

The bill does not one thing to "expand" opportunities in the construction sector. H.R. 3808 would remove incentives for general contractors and property owners to provide safe worksites. Under the NY law, property owners and general contractors, who control the worksite and are in the best position to oversee safety, are responsible for providing safety protections for their workers. If they fail to do so and cause someone to be injured or killed, the Scaffold Safety Law rightly holds them responsible. The only thing that will be expanded under this law would be the carelessness of some property owners seeking to cut corners and cost by decreasing safety precautions.

Responsibility would be the key word here. The Congressman seeks to remove any responsibility whatsoever from general contractors and property owners by placing all the responsibility on the employee. He is wrong. The contractor controls the site and is responsible for safety. Construction workers are completely dependent on employers for a safe working environment. Another error in the Congressman's reasoning is his coalition's point that the law places absolute liability on the general contractor or property owner. This is wrong because the law gives both sides a right to a day in court and a chance to prove their case. If a contractor follows the rules and makes sure safety is a priority, they will not pay a dime. Workers who are the sole cause of their injuries or who ignore proper safety instructions cannot sue successfully under the Scaffold Safety Law - that is just a myth.

The bill is an overreach into the rights of states to decide for themselves, as others have. It is not in the best interest of Congress to insert itself into a debate being held in New York. The state's Scaffold Safety Law makes construction sites safer by creating an incentive for safety, and it works in New York. According to the Bureau of Labor Statistics, from 2000 to 2010, New York had the nation's fifth-lowest construction injury rate.

Our members urge you to oppose this bill.

Thank you.

Sincerely,

Kenneth E. Rigmalden
General President

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GA/Legislation /Oppose HR3808 01292018



North America's Building Trades Unions

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Rep. Bob Goodlatte, Chairman
2138 Rayburn House Office Building
Washington, D.C. 20515

Rep. Jerry Nadler, Ranking Member
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Sean McGarvey
President

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Roofers

James P. Hoffa
Teamsters

Terry O'Sullivan
LIUNA

James Boland
*Bricklayers and
Allied Craftworkers*

Frank Christensen
Elevator Constructors

Kenneth E. Rigmaiden
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James T. Callahan
Operating Engineers

Joseph Sellers, Jr.
SMART

Lonnie Stephenson
IBEW

Eric M. Dean
Ironworkers

James P. McCourt
Insulators

Daniel E. Stepano
*Plasterers' and
Cement Masons'*

Mark McManus
UA

Dear Chairman Goodlatte and Ranking Member Nadler:

NABTU strongly opposes H.R. 3808, the Infrastructure Expansion Act of 2017. This legislation seeks to prohibit states from establishing strict liability standards for certain construction accidents, and is an unprecedented intrusion into state liability law. Furthermore, this legislation would affect any "project for which Federal financial assistance is used, directly or indirectly," which is both undefined and vague, and would have significant repercussions on worksites nationwide.

Construction is one of the most dangerous occupations in the nation. The legislation is aimed at a particular category of hazards from which owners and contractors will enjoy a federally-imposed standard of care: "elevation or gravity-related risks." On its face, this category focuses on falls from elevations, long the leading cause of construction fatalities in the United States. This language, however, could easily embrace a wider swath of common and deadly hazards, including falls on the same levels, falling objects and trench collapses, hazards that kill and injure thousands of workers each year. These are hazards Congress and the administration should be seeking to eliminate, not to excuse.

Moreover, the reach of the proposed preemption is breathtaking. Not only would this legislation apply to construction undertaken by the federal government itself; it would apply to any project "on which Federal financial assistance *is used*." There are probably few infrastructure projects on which *no* federal money is used.

There is simply no reason for the federal government to step in and preempt state law in this area. The workers compensation system already severely limits the ability of construction workers and their families to obtain reasonable compensation for serious workplace injuries. To the extent there are circumstances in which workers and their families can hold property owners and contractors responsible for failing to safeguard the workplace, the states have established their own standards of liability. Congress has no reason to interfere with the states' rights in this regard – particularly when the impact in many states will be to loosen the rules and permit owners and contractors to neglect their responsibilities.

As Congress considers allocating substantial resources to rebuilding the nation's infrastructure, its focus should be on finding ways to couple this spending with encouraging construction project owners and contractors to pay additional attention to removing hazards from jobsites, not helping owners and contractors escape responsibility.

We urge you to oppose the bill.

Sincerely,

Sean McGarvey,
President

cc: House Judiciary Committee Members

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