

REGULATORY IMPEDIMENTS TO JOB CREATION IN THE NORTHEAST—PART I

HEARING

BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS,
STIMULUS OVERSIGHT AND GOVERNMENT
SPENDING

OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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REGULATORY IMPEDIMENTS TO JOB CREATION IN THE NORTHEAST—PART I

WEDNESDAY, APRIL 20, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS
OVERSIGHT AND GOVERNMENT SPENDING,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Rochester, NY.

The subcommittee met, pursuant to notice, at 9:06 a.m., Irondequoit Town Hall, 1280 Titus Avenue, Rochester, NY, Hon. Ann Marie Buerkle (vice chairwoman of the subcommittee) presiding.

Present: Representatives Buerkle and Kelly.

Staff present: Joseph A. Brazauskas, counsel; Sharon Casey, senior assistant clerk; Adam P. Fromm, director of Member services and committee operations; and Cecelia Thomas, minority counsel.

Ms. BUERKLE. Good morning, everyone. The hearing on Regulatory Impediments to Job Creation in the Northeast will begin.

Before we start this morning and get under way, I would ask all of you to join me in a moment of silence. This morning's paper had an article. Three Fort Drum soldiers were killed in the line of duty in Afghanistan. We sit here this morning and we enjoy the freedoms to talk, to discuss the issues, and it is because of the service and sacrifices of the military.

Join me in a moment of silence to remember those brave men who lost their lives, as well as their family and their children. These are young men who have wives and children and parents, and their lives will never be the same. So please just take a moment of silence. Thank you.

[Pause.]

Ms. BUERKLE. Thank you.

Before we begin our Oversight Hearings in Washington, our chairman, Darrell Issa, always begins with a Mission Statement of the Oversight and Government Reform Committee. So I will do likewise here in our District Hearing and our subcommittee Hearing.

Oversight Committee Mission Statement: We exist to secure two fundamental principals.

First, Americans have a right to know that the money Washington takes from them is well spent.

And second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold gov-

ernment accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizenship watchdogs to deliver the facts to the American people and to bring genuine reform to the Federal bureaucracy.

This is the mission of the Oversight and Government Reform Committee.

The Subcommittee on Regulatory Affairs Stimulus Oversight and Government Spending will come to order.

First of all, let me express my appreciation to all of you for being here. We have many of the local elected officials here to the Town of Irondequoit. Our thanks for providing this wonderful venue to have this hearing.

Today we will continue an effort that my subcommittee and the Oversight and Government Reform Committee have been examining since the beginning of this year. Our committee has focused on the regulatory impediments to job creation. Our committee has focused on what government has done to get in the way of business and success in our economy.

We've heard from job creators across the country about how the Federal Government stifles job creation, and today we'll focus on the issues that affect job creation in upstate New York.

The strength of the economy and unemployment are on the minds of most Americans. The nationwide unemployment still hovers at around 9 percent. That unemployment figure does not reflect the millions who have given up looking for work. The rate is the same in the State of New York, 8,000 of our neighbors received unemployment benefits during the month of March. This is unacceptable. We must create more jobs and turn the economy around for all New Yorkers.

Today we will hear from our local job creators in business and in agriculture. They conduct business right here in central New York. Our witnesses are construction workers, dairy and apple farmers, berry farmers, defense contractors and others who employ many members from the local community and provide necessary goods and services to our region.

As we attempt to recover our economy and put the people of this region back to work, we must begin to understand the regulations that these industries face on a day-to-day basis as they attempt to survive. Industry faces an enormous amount of regulations from many Federal agencies. This committee has heard from job creators about regulations from the Environmental Protection Agency, the Department of Labor, Occupational Safety and Health Administration, and the Food and Drug Administration. The cumulative impact from regulations from all these agencies is particularly harmful because of the difficulty in implementing these regulations, as well as the tremendous cost of compliance. These costs negatively impact job growth and really are a hidden tax on businesses.

Worse yet, last week the EPA testified before a different house committee and admitted that the EPA ignores the affects on jobs and the regulations that they issue.

Local governments and municipalities are struggling to deal with the state of the economy in continuing to provide essential services to constituents while dealing with the Federal bureaucracy. The

practice of the Federal Government pushing unfunded mandates down to the States leaves local municipalities under intense pressure to make their budgets work. These local governments already have major budgetary constraints and struggle to provide basic services for their community. Moreover, regulations that range from health care to street sign replacement pile on even more costs to local government together with unfunded mandates.

This hearing this morning will allow businesses, farmers and local governments from New York and upstate New York to provide Congress with an opportunity to hear about Federal agencies and how they affect their ability to create jobs and provide for their communities. We are listening to all of you and we want to hear what you have to say.

At this time I would like to introduce my friend and my colleague from Pennsylvania, Mike Kelly, for his opening statement.

Mr. KELLY. Thank you, Madam Chairman.

First of all, I want to thank the Congresswoman for inviting me here today and to be with all of you. And because our mission really is to listen to what's going on and to hear what you have to say. This is not about Republicans, it's not about Democrats, it's not about finger pointing; it's about fixing what we have in front of us all right now for all Americans. So I would hope that as we go through this, and you witnesses especially, thank you. It is critical that we learn.

And it's great to be with one of my favorite freshmen. We met early on when we got to Washington, and I think we have the same type of background. We understand what it takes to run a business; we understand how difficult it can be; and we understand also right now the influence of government on what it is that we try to do every day because we truly are the job creators. We are the people that will drive the economy forward and make it possible for people to get back to work if we can get government in the role it should be, and get their boot off our throats so we can operate our businesses in a manner that they need to be operated.

So Ms. Buerkle, thank you so much. It's a pleasure to be with you and it's a pleasure to be in New York. Thank you all for being here.

Ms. BUERKLE. Thank you very much.

I want to say, for the record, that Members may have 7 days to submit opening statements and extraneous materials to our record. We will also be accepting other statements and testimony from other individuals who will not be testifying here today so that we have a good comprehensive look at how the government is impeding success here in upstate New York.

Now I would like to welcome our first panel of witnesses this morning and our first panel is small businesses. I would like to introduce, first of all, Ms. Rebecca Meinking. She is the executive vice president of Radec Corp.; Mr. Bill Pollock, and he is CEO of Optimization; and Mr. Mike Mandina, he is the president of Optimax.

Good morning and welcome to all of you and thank you for being here this morning.

Pursuant to the committee rules all witnesses will be sworn in before they testify.

So if you would stand up and I'll ask you to raise your right hands.

[Witnesses sworn.]

Ms. BUERKLE. Let the record reflect that all witnesses answered in the affirmative.

Thank you very much. Please be seated.

In order to allow time for discussion and for our questions from the Congress, we'll ask that you limit your opening remarks to 5 minutes. However, given the fact that there is just two of us, we have a little bit more flexibility. So we are anxious to hear your opening statements.

Mr. Mandina, if you would like to start.

STATEMENTS OF MIKE MANDINA, PRESIDENT, OPTIMAX; REBECCA MEINKING, EXECUTIVE VICE PRESIDENT, RADEC CORP.; AND BILL POLLOCK, CEO, OPTIMATION

STATEMENT OF MIKE MANDINA

Mr. MANDINA. Thank you. It's a pleasure to be here, and I certainly did not want to be the first one to start.

Optimax is a precision optics manufacturer. We currently have 150 employees. We are the classic startup with one person 20 years ago, and we are a high-tech manufacturing company just outside of Monroe County, in Wayne County.

Two issues, one that I have written in the testimony is about the work force issues. Optimax, having hired 150 employees and currently hiring four employees a month for the next year, is faced with the issue of lack of skill sets for what we provide for our services, and I think that the—there are ways that—there's a lot of waste in the system in terms of getting the proper training to the fresh minds that should be able to do the work that we do.

And one of the things that I have been promoting is the SECTORS Act, which is a Federal-level act that has passed the House. This allows a clustering of around regional competencies, if that were allowed to exist, then we could dig down deep and get rid of some of the waste and the cost and it would be cost savings. But this is creating an entity that doesn't exist right now.

I will point to the WIRED grant funds that brought together our region, which we won \$13 million, I believe, here a few years back. And that was the first time that I participated in anything that brought our region together around wealth creation. Now, around wealth creation that generates taxes and that allows strong voices to do the right thing, including all the stakeholders; the academic institutions were at the table, government was at the table, the manufacturers and hospitals, it was wonderful. So we had 60 or so people at the table and we could have done something with that. When the funds ran out, it stopped. And I think that was the catalyst to drive cost out of government, to drive cost in a very efficient flow of services down.

So I would like to see—and I think the SECTORS Act is a way to bring that back. It did pass unanimously. It's a very—both sides of the aisle agree on it. So I think that is something that can help to get to the root of what you're wanting to do in terms of removing impediments to jobs.

The other key thing, which is not in my testimony which I didn't put in there because I couldn't remember all the words to the acronym and I still don't know, it's called ITAR. It's a trade restriction about shipping technology overseas. So for technology manufacturers who want to sell globally, it is a hurdle. Optimax does 1-week delivery on precision optics. We have to get permission to ship those optics. The permission takes 3 to 4 weeks to get. And we've actually been denied sending a simple lens to Israel, to a company that was in Israel, because they were associated with a nuclear power plant. So it makes no sense to me whatsoever—so I'm sure Germans or some other entity supplied those optics.

We currently have a—which I was sweating bullets on this—we have a multi-billion dollar opportunity with a Chinese company selling high-precision optics—actually they're visiting Optimax today. We have a ground-breaking ceremony today for 20,000-square-foot expansion which has to do, to a large extent, with this firm that we're selling optics to China. We were sweating bullets that ITAR would not approve that because it was for technology applications. And it did go through; we were very pleased with that. However, we almost didn't even try because it's such a hurdle that we have decided strategically to only sell domestically.

If the Chinese—this company had not sought us out and asked us to participate, we would have not. We are not the only firm that has this issue. So anybody that's in the technology space who tries to sell—and if the United States can't sell technology globally, I'm not sure what else we can sell. The ITAR restrictions are a restriction on our ability to sell globally and to bring foreign capital into the United States.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Mr. Mandina follows:]



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4-18-11

Witness Information

Hearing: "Regulatory Impediments to Job Creation in the Northeast"

Optimax is celebrating its 20th year in business. We are the classic boot-strap startup story for a high-tech precision manufacture. We currently employ 150 and have plans to increase headcount to at least 180 over the next year. Growing a domestic manufacturing business in the era of global competition and outsourcing is truly a challenge, but it can be done. One of the key success strategies for any manufacture is building a culture of continuous improvement. It requires an unrelenting mission to eliminate waste enabling a sustainable business model and growth.

In order to build a culture of continuous improvement old habits must be broken. Some of the fundamentals of how business is conducted need to change. I believe much of the solution to removing regulatory impediments to job creation is built into the "Strengthening Employment Clusters to Organize Regional Success (SECTORS) Act" (S777/HR 1855).

I have attached a piece I wrote last November after a visit to Washington to promote the Act. Without repeating all the content in the next 4 pages, let me summarize by stating that leveraging existing government channels to build wealth creation opportunities around existing core regional competencies will drive job creation. That is what the SECTORS Act enables.

Because of the inclusionary nature of the Act, stakeholders will surface issues like "regulatory impediments" out of the process increasing the likelihood they can be effectively be dealt with.

Mike Mandina
President
Optimax Systems, Inc.

11/23/10
Mike Mandina
President

FAME, RRPC and RTMA representation in Washington in support of the SECTORS Act

Last month I was invited by Bruce Hermann, (Deputy Commissioner of Labor for Workforce Development, NYSDOL) to attend an employer Fly-In Event hosted by the National Skills Coalition. I was one of 17 business people from around the country representing employers in manufacturing, health care, construction, and clean energy. The purpose of this event was to meet with high level policymakers to discuss skill gaps, and how an industry driven training approach known as sector partnerships can help fill those gaps. The details of the sectors partnership is contained in The SECTORS Act. This is a bill that has bi-partisan support and was unanimously passed by the House of Representatives and is awaiting Senate approval. The bill dedicates federal support to sector partnerships.

Those of us who work in industry clusters understand the power they generate. They are especially useful for bringing small and mid-sized firms together around the issue of workforce. The cluster is the focal point for a common voice, creating a hot spot that other stakeholders can find and join. Government agencies (often WIBs), academia and suppliers are some of the key stakeholders who participate in industry led clusters (sector partnerships).

There are three clusters that I actively work with: FAME (Finger Lakes Advanced Manufacturers' Enterprise), RRPC (Rochester Regional Photonics Cluster) and the RTMA (Rochester Tooling and Machining Association). All three clusters have had or are currently receiving some form of governmental support. The funding has been important since the notion of using sector partnerships to drive coursework development at community colleges and for directing DOL training funds is a relatively new concept. Ultimately one might consider is a paradigm shifting phenomena that will require time and sustaining support in order to reach full potential.

Andy Van Kleunen, Executive Director for National Skills Coalition, which hosted the employers and facilitated the meetings said, "We applaud these business leaders for their efforts to build support for public-private partnerships that will enable our education and training institutions to better meet the needs of regional industries and provide new pathways to good jobs. Newly skilled workers, trained in collaboration with employers will be vital to economic recovery."

We met with officials from the White House Domestic Policy Council and Office of Management and Budget as well as Senate committee offices. Secretary of Labor Hilda Solis welcomed our group at the Department of Labor, where we met with Assistant Secretary Jane Oates, Employment and Training Administration. We delivered the message that we have record unemployment and skilled jobs going unfilled and that we should never have these two problems at the same time. We delivered the message to

these national policymakers that the skill gap is real; it's keeping people unemployed, making it very difficult for companies like Optimax to grow and add jobs. Research supports what employers are experiencing on the ground and suggests that the skill gap could be stifling efforts to lower the unemployment rate.

According to a recent International Monetary Fund study, the skills gap is at a historical high in many states, especially in those with large manufacturing sectors. The skills gap accounts for 50 basis points of the increase in unemployment since 2007.

Together we represented employers from twelve states delivered a strong message to policymakers in Washington that Sector Partnerships are a proven strategy in need of federal support.

A member of our group, Jennifer Hermann of UCSF Medical Center in San Francisco, California said, "Sector Partnerships offer distinct capacity to bring employers together across an industry to figure out their common skill needs and work with education providers, labor, and community organizations to shape training accordingly. That means my organization can focus on the business of patient care. It means people in my community can train for a job and advance in my organization. It's that simple."

A recent, multi-year study by Public / Private Ventures on the effectiveness of sector-focused training programs found positive outcomes for workers including, steadier employment with increased earnings and better access to benefits. We called on members of the Administration and Congress to act swiftly in moving the SECTORS Act through the Senate and to build on that momentum to reauthorize the Workforce Investment Act.

Scott Ellsworth of Tipco Punch, Inc. in Hamilton, Ohio added, "The single biggest issue facing our country is jobs. Despite all the talk of political polarization in our country, the House of Representatives passed the SECTORS Act on a unanimous bi-partisan vote. That's because this issue of skills rises above politics. It's something we can all agree on. It's time for the Senate to rise above partisan politics and do what's right for America's business owners and America's workers."

During the visit Jane Oates openly acknowledged that she supports the Sectors Act. This was the first time she had made this statement further enhancing the likelihood of imminent passage. She also made reference to the \$2 billion award being offered to the 1,100 community colleges.

The Education Affordability Reconciliation Act was signed into law in March 2010. The Act provides \$2 billion for the Community College and Career Training Grant Program, a new Trade Adjustment Assistance (TAA) program that was created in last year's American Recovery and Reinvestment Act but never funded. The reconciliation bill provides \$500 million per year for fiscal years 2011 – 14 for this program, to fund training and education programs at community colleges and other institutions that serve the needs of TAA-eligible workers. These grants will be awarded competitively, but one or more institutions in each state will receive at least .5% of the grant funds, or \$2.5 million per state. The program should fund a wide range of training initiatives.

Through our current clusters: FAME, RRPC and RTMA, and others our region is well positioned to apply for and win significant funds to further develop our skilled worker pipeline.

Here are my take-aways:

- The good work going on in FAME, RRPC and RTMA is indicative of the “best-in-class” sector partnership models anywhere in the country.
- Smart people with influence recognize that the old *push* model of funding resource to build workforce is wasteful and that a collaborative *pull* model led by industry will direct resources so that there is a ready supply of skilled workers who can now earn livable wages.
- What we are attempting is so radically different to what has been done, that it is a paradigm shift for most stakeholders, and as such, will take a sustained commitment over a long period of time.
- Support the SECTORS Act. It is waiting Senate Approval.
- Prepare FLCC, MCC and GCC to win funds from the available \$2 billion Education Affordability Reconciliation Act. There is a requirement for industry collaboration in order to be eligible.
 - FAME is scheduling roundtables with each of the area community colleges to develop an action plan.
- The National Skills Coalition www.nationalskillscoalition.org is doing good work.
- The WIBs, BOCES and Community Colleges and HTR-MEPs (Manufacturing Extension Partnerships) are key stakeholders in our advanced manufacturing industry lead partnership.
- Small and mid-sized business must step-up, get together and lead or we will get what we deserve.

###

National Skills Coalition is a broad-based coalition of employers, unions, education and training providers, and public officials working toward a vision of an America that grows its economy by investing in its people so that every worker and every industry has the skills to compete and prosper.

Employers participating in the two-day fly-in included: Erick Ajax, E.J. Ajax and Sons, Minneapolis, MN; Richard Berkowitz, Transportation Institute, Seattle, WA; Michael DiMarino, Linda Tool, Brooklyn, NY; Scott Ellsworth, Tipco Punch, Inc., Hamilton, OH; Michael Galiazzo, Regional Manufacturing Institute, Sparks Glencoe, MD; Jennifer Hermann, UCSF Medical Center, San Francisco, CA; Paul Hoffman, Orange Research, Inc., Milford, CT; Pamela Lenzion, Marinas International, Dallas, TX; Michael Mandina, Optimax Systems, Inc., Ontario, NY; Carl Moyer, Yahoo, Hillsboro, OR; Diana Parr, Uniloy Milacron, Inc., Tecumseh, MI; James Paulson, Shepard-Interactive, Portland, OR; Douglas Rose, Aero Gear, Inc., Windsor, CT; Gabe Shapiro, Next Step Living, Inc., Boston, MA; Liza Smitherman, JostinConstruction, Inc., Cincinnati, OH; Michael Tamasi, AccuRounds, Avon, MA; Richard Winsman, Kelso Longview Chamber of Commerce, Longview, WA.

Partner organizations included: Brooklyn Chamber of Commerce, Connecticut Center for Advanced Technology, Greater Cincinnati Workforce Network, Jackson Area Manufacturers Association, JVS Boston, JVS San Francisco, Maine Marine Trades Association, National Fund for Workforce Solutions, SkillWorks, Workforce Development Council of Seattle King County, Southwest Washington Workforce Development Council, Worksystems, Inc.

Ms. BUERKLE. Mrs. Meinking.

STATEMENT OF REBECCA MEINKING

Ms. MEINKING. Good morning Vice Chairwoman Buerkle and Committee Member Kelly. I would just like to thank you for the opportunity to testify.

My name is Rebecca Meinking. I am the executive vice president at Radec Corp. We're based here in Rochester. We are a full-service, residential, commercial and industrial electrical contractor. We perform between \$10 and \$12 million of electrical work annually, and we've been in business for about 35 years, a family owned business recently transferred from the founding generation to the next.

At our high we employed approximately 80 local people. In the last several years, besieged by the bad economy, rising costs of construction materials and, quite frankly, government regulations that are doing little more than strangling us and really not providing any benefits to us, we've had to cut our work force by about 30 percent.

I also appear before you today as a member of Associated Builders and Contractors, the Empire State Chapter. ABC represents around 23,000 merit shop contractors nationally and here in New York. The Empire State chapter represents approximately 500 of merit shop contractors like me.

ABC's membership really is bound by a shared commitment to the principal that a free and open market where government regulation is kept to a minimum—we certainly don't propose that there should be no regulation—but where government regulation is kept to a minimum, really does provide the best foundation for job growth and economic vitality for all of us.

I'm going to share with you three different areas where we are experiencing difficulty from a Federal regulatory standpoint.

Executive Order 13502, signed into law by President Obama back in February last year, or actually February 2009, basically encourages the use of project labor agreements on Federal construction projects exceeding \$25 million in total cost. As a construction industry employer, Radec's ability to maintain and grow employment opportunities within our company is contingent on our ability to be able to compete and perform work in the public sector. Executive Order 13502 strips away that opportunity from our company and it does the same for the many merit shop contractors here in upstate New York, in New York State and, quite frankly, nationally.

As a merit shop contractor, Radec Corp. cannot and will not work under the terms of a project labor agreement and there's two main reasons why we won't. First a PLA requires that we, as a company, ignore our own highly skilled work force and, instead, employ workers from the union hall. And in our case we are forced to employ workers from the union that works day after day to try to unionize our company or to put us out of business. As a small business our employees really are part of our extended family, and we can see no reason to take away their opportunity to work to provide opportunities for their union counterparts.

It forces us basically to discriminate against our own workers and that's just plain wrong and we won't do it as a company. What right does any government entity have to tell me as a business what workers I can use on a project and what workers I cannot use on a project. It really is analogous to either of you running for reelection next year and the government telling you, you have to draw your campaign work force from the campaign work force of your opponent. It makes absolutely no sense.

Second, as a merit shop contractor, if I work under a PLA, I have to force the few workers from my own work force that I am allowed to use on the project to pay union dues and to, essentially, join the union for the duration of that project. Radec Corp. employees have freely chosen to not join a union. They don't believe union representation is in their best interest. So a PLA is a losing proposition for them and we value and respect them much too much to force that upon them. So our only option is to not bid jobs that have project labor agreements attached.

Our tax dollars and our employees' tax dollars are funding those projects, but because we have chosen to work in an environment free of third-party interference, our government takes away our opportunity and our workers' opportunities to work on those projects.

PLAs discriminate against hundreds of legitimate local businesses and they're a significant obstacle to us in our ability to maintain our current work force, let alone grow that work force. I would strongly encourage both the House and the Senate to immediately pass H.R. 735, the Government Neutrality and Contracting Act which I'd like to publicly thank Vice Chairwoman Buerkle for being a sponsor of, because it will really ensure that we all, as construction companies, whether we're union or non-union, will have an opportunity to participate in public construction projects financed with public dollars.

Second, the National Labor Relation Board. They have some proposed rulings and proposed rulemakings that would significantly change the way that the work force is governed going forward and how American workplaces will function from a labor perspective.

One of the rulings that they are being rumored to make is a ruling that would require employers like Radec Corp., who allow well-meaning, charitable organizations, to come on to our worksites or into our offices and talk about the work that they do and promote the work that they do to our employees. The NLRB wants to force us to give the same access to union organizers to come on to our job sites if we provide that access to charitable organizations.

Another contemplated ruling would basically change the way collective bargaining units are determined. Right now in order for a union to organize a company, they have to get the majority of the whole work force that performs similar work to agree that union representation is in their best interest. The NLRB would like to change that and allow for different worksite organization. So for a construction company like mine that performs work on several sites on a daily basis, the unions could actually go in to one of my job sites, organize my workers there, but my workers on four other job sites would not be organized. So I'd be dealing with different pay scales, different work rules within my own company. Rather ludicrous, in my opinion.

Last, the NLRB issued a proposed rulemaking. My understanding is they are preparing to finalize this rule that will require us as employers—and I think I have gone over my 5 minutes, I apologize, I knew I was going to do that—they want us to post a notice to our employees that basically lists a very incomplete list of rights of our employees to organize. And when I say “incomplete,” what I mean is the notice tells our employees all about their rights to organize, but it sort of leaves out the fact that they also have a right to not organize, and quite frankly, the way the notice is worded, it almost appears as though we, as Radec Corp., are actually encouraging our employees to organize, which I can assure you is quite far from the truth. These really egregious outreaches by the NLRB I believe need to be curtailed and I would encourage Congress to do whatever. I don’t know the answer to it, but I would encourage for you to look at whatever ways you can find to pull them back a little bit.

Last I just want to touch on OSHA. OSHA has, in the past, been somewhat collaborative in how they work with employers to ensure job-site safety. But they have very publicly advertised a much different approach which is really enforcement driven. They’re focusing on finding worksite violations and issuing substantial fines instead of working collaboratively with us as employers to promote the overall safety of our work places. This is pretty clear in the construction industry specifically. This new approach is just another costly burden that we, as a business, have to deal with and it really creates a level of financial uncertainty for us that really requires us to hold back in terms of any sort of expansion.

The other issue is, right now when OSHA finds a violation on a worksite, only the employer is fined for that violation. I would encourage OSHA to look for collaborative ways to work with employers and employees who do have a level of responsibility in their own safety and the safety of those who they work with to come up with programs that will help to encourage that level of safety creating those types of programs instead of seeking to financially cripple businesses to coerce safety, really, I believe, would result in safer work places overall.

So I would encourage Congress, again, to look at ways to help OSHA to return to their collaborative and cooperative spirit of working with employers instead of the punitive approach they are currently taking.

Then I want to thank you for the opportunity to share some of these issues. I do just want to point out, Vice Chairwoman Buerkle, you are my congressional representative, and I’m thrilled that you are. And I remember in your campaign you ran on the statement that: Government does not create jobs, business does. And it really is paramount that government realize that they are there to create the type of environment that we, as businesses, need to grow and prosper and contribute to the economy. And I can’t thank you enough for allowing us to bring some of these things to light in hopes that we can resolve them and work together to help to restore our economy.

So thank you very much for the opportunity to be here today.

Ms. BUERKLE. Thank you very much for your comments.

[The prepared statement of Ms. Meinking follows:]

Statement of Rebecca A. Meinking, Executive Vice
President, Radec Corporation, 100 Rockwood Street,
Rochester, NY 14610

Chairman Jordan, Vice Chairman Buerkle, Ranking Member Kucinich, other
Subcommittee members:

Good morning and thank you for the opportunity to testify before you today. In the
interest of time, I request that my full written testimony be included in the hearing record.

My name is Rebecca Meinking. I am Executive Vice President of the Radec
Corporation, based here in Rochester, NY. Radec Corporation is a full service
residential, commercial, and industrial electrical contractor. We perform between 10 and
12 million dollars in electrical work annually. We have been in business for nearly 35
years as a family-owned business, recently passed from the founding generation to the
next. At our high, we employed approximately 80 local people. In the last several years,
besieged like every other construction business by the struggling economy, higher
construction material costs, and ever increasing regulatory burdens that do little more
than increase our overall costs to do business, we have been forced to cut back our
workforce by nearly 30%.

I also appear before you today as a member of Associated Builders and Contractors
(ABC), which represents 23,000 merit shop construction contractors like us nationwide,
and here in NY, just over 500. ABC's membership is bound by a shared commitment to
the *merit shop philosophy*—based on the core principle that a free market economy where
government regulation is kept to a minimum provides the sturdiest foundation for job
creation and economic strength and vitality for ALL of us.

I appreciate the opportunity to briefly share with you some of the regulatory impediments

at the federal level that have and will continue to erode our ability as a small business to contribute to the growth of a stronger economy if they are not addressed. In the interest of time, I request that my full written statement be included in the hearing record. That full written statement offers numerous impediments in a detailed fashion. I will focus on the three most onerous issues that my company in particular believes MUST be addressed if construction businesses here in NY are to be the job creators that our struggling economy so desperately needs.

Executive Order 13502, signed by President Obama in February 2009, and the subsequent Federal Acquisition Regulatory (FAR) Council rulemaking implementing that Executive Order, strongly encourages federal agencies to require project labor agreements (PLAs) on federal construction projects exceeding \$25 million. As a construction industry employer, my ability to maintain and grow employment opportunities within my company is contingent on all construction companies, both union and merit shop, having an equal opportunity to perform work on construction projects financed with taxpayer dollars. Executive Order 13502 does exactly the opposite. As an open shop contractor, Radec Corporation cannot and will not consider working under the terms of a PLA for two main reasons. First, a PLA requires that we as a company ignore our own highly skilled local workforce and instead employ workers from the union hall – workers that in our particular case, come from the very union who is engaged day in and day out in trying to either unionize our company or put us out of business. As a small business, our employees are really part of our extended family, and we can see no reason to take away from them an opportunity to work and provide for their families in order to provide opportunities for their union counterparts. It forces us to discriminate against our own workers, and that is just plain wrong and we won't do it. What right does a government entity have to tell us as a business what workforce we can and can't employ on a project? Second, as an open shop contractor, if I work under a PLA, I must force the few workers that I am allowed to employ from my own workforce to pay union dues and essentially "join" the union for the duration of that particular project. Radec Corporation employees have FREELY decided that union representation is not in their best interest. So a PLA is a losing proposition for them, and we value and respect them too much to force that on them. So, our only option as a company is to avoid working on PLA projects. Our tax dollars, and the tax dollars of our employees, pay for these projects, but simply because we as

a company and our individual workers choose to work in an environment where we communicate directly with one another and we value productivity and performance over seniority, our government takes away our opportunity to work. PLAs discriminate against hundreds of legitimate local businesses and local construction workers, and are a significant obstacle in our efforts to even maintain our current workforce let alone grow that workforce. PLAs are nothing more than bid rigging mechanisms that favor big labor over their open shop counterparts and ultimately stymie job growth opportunities in the construction industry as a whole. That coupled with the fact that they deny taxpayers the accountability that they deserve on public construction projects should be reason enough for Congress to expedite passage of H.R. 73, The Government Neutrality in Contracting Act which would prohibit PLAs on taxpayer funded projects, ensuring equal opportunity for ALL employers in the construction industry to fairly compete for federally funded construction work opportunities for their employees. I'd like to thank Vice Chairman Ann Marie Buerkle for recognizing the importance of this legislation in strengthening our overall economy and co-sponsoring the bill. And I would strongly encourage both the House and the Senate to pass it IMMEDIATELY.

I am also gravely concerned about National Labor Relations Board(NLRB) recently issued rulings and pursued rulemakings that would vastly change, in a way that would be detrimental to open shop construction companies like mine, how American workplaces will function from a labor perspective. One of these new rulings would require employers like me that allow charitable, well-meaning organizations onto the work premises to promote their noble causes to provide the same access to union agents, even where the union's intent is not to organize, but simply to disrupt business operations by trying to turn away customers through boycotts and similar activities. Other contemplated rulings would change 50 years of established practice dealing with what constitutes a bargaining unit and require business owners to provide union organizers with the names and email addresses of their employees. The Board also recently issued a Notice of Proposed Rulemaking (NPRM) that would require employers like me covered by the NLRA to post a notice outlining employees' rights to organize and bargain collectively. Their proposed poster contains an INCOMPLETE list of rights, failing to point out to employees that in addition to their right to organize, they also have a right to NOT form, join, or assist labor organizations, bargain collectively, or engage in other concerted activity.

As an open shop contractor, my company believes that every crafts-person should have the freedom to choose whether or not to join a labor organization, and that every contractor should be able to bid work competitively and work with any firm, regardless of labor affiliation or artificial work restrictions. We believe that all our workers should be compensated based on

their performance and value to our Company and our Company's value to our clients. This is how our Company AND our employees have prospered over decades. The growth and personal achievement we have experienced at the Radec Corporation over the years is the result of company management and employees working together in a spirit of cooperation and teamwork that has enabled us to meet many difficult challenges. The progress that has been achieved reflects this strong mutual commitment between the Company and our employees. We do not and will not discriminate against any of our employees or applicants based upon support for unions or lack thereof. However, we prefer to work with our employees informally, personally, and directly, rather than through third party outsiders intervening between us. We are proud that our employees have chosen to make us a union free employer. We are firmly committed to maintaining that business model because it is key to our continued prosperity and our continued ability to create jobs. I urge Congress to look for opportunities to curtail the NLRB's blatant and downright biased undermining of our ability to run our business in a way that allows us to grow our company AND provide opportunities for both current and prospective employees to grow professionally and prosper individually.

Lastly, the Occupational Safety and Health Administration (OSHA) under the Obama Administration has very publicly advertised its new enforcement perspective that solely focuses on finding worksite violations and issuing substantial fines (revenue generation) instead of working collaboratively with employers like me to promote safe working conditions as they have done in the past. This has become abundantly clear in the construction industry perhaps more than any other industry. This new more punitive approach is yet another costly burden on businesses like mine and creates a level of financial uncertainty that again impedes our ability to grow and prosper as a company. Under current OSHA regulations, only employers are penalized when a safety violation occurs. I can assure you that my company places utmost importance on returning each and every one of our employees to their families safely each and every day. We take safety very, very seriously, as we should. But our employees must also assume a level of responsibility for their own safety and well-being, and the safety and well-being of their fellow employees. Creating OSHA programs that seek to collaborate and partner with employers to insure both employer AND employee responsibility where safety is concerned, as opposed to a solely punitive approach that seeks to financially cripple businesses to coerce safety would ultimately achieve safer workplaces across the board. I urge Congress to find opportunities to encourage OSHA to abandon its punitive enforcement approach and instead consider collaborative ways to partner with employers and employees to promote safer workplaces in the construction industry specifically.

Mr. Chairman, this concludes my formal remarks. Again, I thank you for the opportunity to share very specific challenges that my company, and many open shop contractors like me, must overcome in order to again become the job creators that our struggling economy so desperately needs right now.

I am prepared at this time to answer any questions that you may have.

Ms. BUERKLE. Mr. Pollock. Good morning.

STATEMENT OF BILL POLLOCK

Mr. POLLOCK. Good morning and thank you for inviting me.

I'm the president of Optimization Technology, which is a privately held ESOP company, and we are in the business of designing and building factories; so that puts us in the manufacturing sector.

During the period from 2000 to late 2008, we grew the company from 50 employees to 350 employees. What we have discovered is that even when manufacturing isn't as strong as it could be, if you have good automation and good tools, that you can keep competitive manufacturing going in the United States. And if you look at the statistics, you know, of course, that Monroe County is a great exporter of all kinds of manufactured goods around the world. We can manufacture at Optimization things which are sold competitively all over China and Taiwan and Japan and Korea and Singapore and other places.

So it is a good place to be here. The difficulty, as you've asked us to talk about, is what is the government doing to hold us back. And that's what I would like to talk about a bit today.

I can remember distinctly the morning of July 12, 2010, and that was the morning I came into work early, as usual, to get going and I opened my mail from the day before and there was a registered letter there from the U.S. Department of Labor. And in the letter they had lots of big words and talked about administration and enforcement and Title 1 and how they were established there to make sure that compliance was held.

Now, it's not only the case that there's plenty of compliance issues going on at the Federal level, there's lots of audits going on at the Federal level. And this letter was announcing an audit of the Optimization Technology's medical health care plan. "The Secretary shall have the power in order to determine which person, if any person, has violated or is about to violate any provision of the titled regulation."

Now, when I read that, basically what it said was they were there coming to audit our health care plan and that we had 7 days to produce 28 documents and answer four pages of questions. And, of course, we buy the health care plan from MVP or Excellus, we don't create the health care plan, but now we have to take all the books, read through and become experts of the health care plan and we have 7 days to respond to this or we're going to be subpoenaed in violation. We asked for an extension. We were told that 3 days was the maximum extension you could have.

Now, at that point in time, when I got that letter, I will be honest with you, that was the first time I actually seriously considered throwing in the towel. And I sent an email to my vice president and said, you know, it's really not worth it. We should just give it up.

This letter was the seventh audit we had received from a governmental agency in 2010, and we're only in July. We were in the middle of an IRS audit that had begun in May. When the IRS auditor arrived, I said to him—first day we gave him 40,000 pages of transaction files so he could peruse through and start looking through things—"How long are you going to be here?"

He said, "Six months."

And then began—we gave him an office, gave him coffee, we moved him in—began the ordeal. And every day I'd go down and he would ask questions and we would produce more documents. I will say at the end of IRS audit—well, part way through, we were almost wrapping up—He said, "No, we've talked this over. We'd like to audit another tax year."

They did stay for 5½ months, at which point in time we got a letter from them which said that there were no findings and that everything was fine.

And in truth, we got through the Department of Labor audit as well and all the other audits. We have had no fines and punitive actions. And in truth these audits were put there really in compliance issues. They may have been looking to find money, as Becky has implied, but they didn't find anything from us. We are very good at responding to audits. We are very good at staying in compliance. We are very good at creating jobs and creating factories as well, but when our energy is sucked off to do things which are counterproductive to the business, essentially audits are just there to poke around and see what you have done wrong.

And there's a mindset that's put into these auditors as they are trained that businesses are essentially criminals, they must be doing something wrong, they must be abusing their employees, otherwise, how could they be so successful.

And I'll tell you the reason we are successful is because my employees have my back all day and every day, and they do everything double, and triple and quadruple what anybody would even consider reasonable in order to maintain the company.

But we have to deal with the Department of Labor. And these are the State level, of course, as well as the Federal level: With the IRS, with ARISA, with health care, with 401(k) audits, with ESOP audits, with the Census Bureau sending endless forms to be filled out under penalty if you don't, with OSHA, and other regulations. Sarbanes Oxley has lowered down to very, very small businesses. We hire two accounting firms: One to provide counsel so that we can make sure we are in compliance when the audit firm comes in. Then we have to have the two firms duke it out is what really says in the regulation.

So it isn't a simple business running a small business anymore. I estimate that even on that IRS audit, myself, last year I spent 200 hours of my own time. If that time had been freed up to do marketing and sales and work with clients, we could have created 10 additional jobs instead of just dodging government bullets.

And so, I mean, I think the first piece that has to come down is we have to look at every regulation and say, is this reasonable? Is it practical? But then above and beyond that, how many auditors have been hired? How large has the government bureaucracy been grown in terms of IRS and OSHA and other people in order to force compliance, and how much of that money is being spent is counterproductive to growing the economy? Because not only are those people sucking off of tax dollars in order to get their paychecks, they are also sucking off our backs and taking us away from the opportunity to grow our own companies and do other things.

I appreciate you listening to us. I don't have any great expectations, but we are going to survive one way or the other. We don't ask for handouts. We are not asking for support above and beyond. Let's be a little practical about how we go about things.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Mr. Pollock follows:]

Testimony of William Pollock, PE, President of Optimization Technology, Inc. for the hearing on held by Congresswoman Buerkle for the Committee on Regulatory Affairs, Stimulus Oversight and Government Spending, April 20, 2011.

I distinctly remember the morning of July 12, 2010. I arrived at work about six in the morning ready to take on the challenges of another day. I picked up the mail from the evening before and began to open it. Included was a letter from the US Department of Labor announcing a health care audit. In their words "Dear Mr. Polloci, (they spelled my name incorrectly) The U.S. Department of Labor has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the Optimization Teclmology, Inc. Medical Plan. The Plan is scheduled for investigation by this office. Investigative authority is vested in the Secretary of Labor by Section 504 of ERISA, which states in part: "The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order hereunder to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title. We ask that you submit to this office the documentation indicated on the enclosed list with respect to the above referenced plan by **Monday, July 19,2010.**"

We had seven days to respond to four pages of questions and produce answers along with 28 documents about our heath care plan. Failure to comply would mean that I could be subpoenaed to go to Boston for an in office audit. I should point out to you that we simply buy a plan offered by one of the local health care providers. We do not profess to be health care plan experts nor have we created or drafted any of the terms of this health care plan. But it became our job to review all the fine print, terms and conditions of the plan offering and make certain that they were in full compliance with the Federal health care laws. I already had a full plate. Optimization is in the business of designing manufacturing equipment. The past three years have been challenging ones in our business as most manufacturing firms had cut back or eliminated their capital spending. Optimization presently has about 350 employees. During the past decade we have added over 300 jobs. Our payroll in a normal business year is about twenty million dollars. In order to survive the downturn without massive layoffs we had to adopt a lot of austerity measures, reduce our own spending as well as the work hours of many of our staff. Our reward has been a massive increase in government oversight and compliance requirements. This latest audit was only one more piece of fuel on the fire of frustration, disappointment and exhaustion. The health care audit was one in a long string of government audits and compliance requirements that had filled my time during the year allowing little time for entrepreneurial activities, strategic planning or growth. That morning, for the first time after more than 25 years in business, I actually thought perhaps I should just close the business down. I wrote that in an email to one of our Vice Presidents. Why go on when it appeared that the government was determined that we should be shut down. Let them provide the unemployment that would support our ongoing twenty million dollar payroll.

By that point in 2010 we had already had 6 government audits prior to that one. And this did not include the original record keeping, filings and reporting that was necessary to stay in compliance prior to the audits being scheduled.

We have been told that during the past two years that the government has expanded its employment at all levels including hiring additional auditors to enforce compliance. From the perspective of individuals like myself, who are trying to run and grow businesses, they have adopted a culture that assumes that every business is out to take unfair advantage of its employees. The inference that we feel is that employers, such as myself, are merely criminals intent on abusing, robbing or cheating the people we employ. Compliance appears to be a way of discouraging and harassing employers so that they will give it up and close their doors. That July 12 the arrival of the menacing letter from the Department of Labor came close to achieving that result from me. Only the thought of the employees and their families, who were dependant on their employment, held me back. I resisted the impulse.

During 2010 we had a total of 7 government audits. These included three NYS DOL audits in addition to the US DOL audit, an IRS COBRA audit, a 401K audit two years of IRS financial audits as well as over a dozen different Census Bureau surveys to complete. These audits were on top of the week to week month to month forms from the INS, IRS, DO, OSHA and other agencies that we complete and file. In spite of the barrage of audits and demands, for the most part there have been no fines or penalties assessed against us. The cost has been the cost of compliance, the time to scramble, respond and "argue" our case. It is true that we have, at times in the past, paid the IRS additional tax rather than arguing further, even though we knew we were in the right. At times the time spent being principled is simply too much higher than caving in and paying them.

In my opinion the government sector responsible to license, regulate, audit business has grown out of control. The function now feels more like government gone wild, with a clear intent to harass and intimidate. I suspect that like myself many of my counterparts, are ready to give it up and close the doors rather than fight the bureaucratic red tape any longer. I withstood the urge to do that last July. Perhaps the next surprise audit will be the one that puts me over the edge.

We provide benefits as best we can for our employees. These include a 401K plan with a portion of company matching funds as well as a Employee Stock Ownership plan which allows us to distribute stock in the company to our employees. In turn we are required to engage private CPA firms to provide annual audits of both of these plans. The cost and effort involved in performing these audits is significant.

The regulations regarding the new federal health care plan are also significant while at the same time proving to be at times vague or ambiguous. We are finding it necessary to send staff members to classes and conferences to attempt to understand the rules and regulations so that we can be compliant. We have also found it necessary to spend additional dollars hiring outside

consultants and attorneys to help us to be vigilant and compliant. Implementing the new law is proving to be expensive and time consuming. At this point in time we have no idea how expensive or how time consuming. Even those who drafted and approved it appear to know only an approximation of the costs. We are encouraged by the fact that some of this is coming to light and being corrected. The agreement at all levels for elimination of the new mandatory requirement for 1099s is an example of this acknowledgement. But at the same time we should observe that part of this law contain compliance issues that reach far beyond simply the regulation of health care. The 1099s mentioned above are not directly related to implementing health care alone.

During parts of 2009 and 2010 the Federal Government provided a 65% subsidy for employees who left their employment. It was the responsibility of employers like ourselves to pay the health care bill and then to collect this money back from the former employees and the government. Former employees sometimes paid on time, sometimes late, sometimes not at all. The Federal Government was often late with their payments. The cost of implementation of the plan and the interest on borrowed money to pay the premiums fell totally on us. But the IRS was quick to show up and demand to audit our records. No mention was ever given that they did not effectively hold up their part of the bargain. This was just another form of compliance harassment.

When an IRS auditor arrived to make an audit of our tax records last spring his first request was for a copy of every financial transaction we had made during the tax year in question. We provided for him over 40,000 pages of transaction files. I then asked him how long he anticipated he would be onsite performing the audit. "I expect to be here for six months" was his reply. We arranged office space for him and all the coffee he could drink. The audit was expanded from a single year to include two tax years. During the next five and a half months we continued to provide additional files and documentation. While the end result was a letter from the IRS stating that there were no findings and we were assessed no additional taxes or fees, the cost of compliance was significant. I spent over 200 hours of my own time in addition to that of our staff and hired CPAs to respond to the many questions. We were assured that it was a random audit based on the size of our firm. There were no red flags or indications of impropriety that led to the audit. But the IRS mandate was to increase surveillance and the number of firms being audited and to generate additional tax revenue. The result is a clear disincentive to growing businesses.

Government bureaucracy, red tape, and the costs of compliance have grown out of control. It is time that this change. The average business owner is an honest citizen like myself trying to make a living and offering employment to others. The focus of changes in business law should be to simplify compliance, reduce red tape, encourage and enable. We don't need government subsidies or handouts. What we need is simply the right to run our businesses without overregulation or harassment. Thank you for arranging this hearing and allowing me and other the opportunity to air our frustrations. It is our hope that you can make a difference.

Ms. BUERKLE. And thank you to all three of our witnesses this morning for your very compelling comments.

We have had a number of these hearings, and down in Washington DC, and I have been so—and I know my colleague Mr. Kelly as well—we have been so profoundly affected when you listen to a group of witnesses who have run small businesses. And the question was asked to all of them: If you knew now what you—if you knew then what you know now regarding regulations and all of the impediments to job creation, would you have gone into business and would you have done what you have done.

And each one of the members of that panel said, “No, we would not.”

And so we have reached a point in this country—and when I listen to your testimony, Mr. Pollock, what you went through with all of your audits—we begin to wonder what’s happened to the United States of America in our free enterprise system and our capitalist system, where we have an understanding that the government can’t create jobs. It is the private sector. It’s the private sector that’s going to get this economy back on track. It’s the private sector that does the job hiring and expands businesses and buys more equipment and improves technology.

So I want to tell you that this subcommittee and our entire Oversight and Government Reform Committee is committed to doing that, to recognizing and understanding the impediments that stand in the way of businesses and their success. We will do everything in our power to help small businesses do what they do best, and that is to create and grow a business, to work hard and be successful. Because that’s the American way. That’s the American dream and why many of you have gone into business.

So with that, I would just like to talk a little bit about your testimony and then—so I will. I’d like to just start with the same question to all of you, whether or not you would be in this business if you knew now—if you knew then what you know now. You can all answer and you can start.

Mr. POLLOCK. Sure. The answer is, yes, I would. And really the rewarding part is the employees and the company team. I mean, everybody needs jobs and if I can be a catalyst to help that happen, then I’m going to do it.

Ms. BUERKLE. Thank you.

Ms. MEINKING. Well, I’m not the company owner actually, but I’ll speak for him. And I don’t think that he would not be an owner of a business simply because of the ability that being a business owner allows you to contribute to your overall community through job creation and things like that.

I think we, as a company, are very proud of what we do. We’re just looking for some assistance in making it a little easier to do what we do.

Mr. MANDINA. I think many people involved in small business are survivors and very creative and they’re entrepreneurial and that’s why they’re doing what they’re doing. So certainly no matter the odds, I think most would attempt to be successful. As the odds are stacked against them or those that actually are successful, become fewer and fewer.

And certainly the migration of manufacturing jobs overseas in this country is appalling. And certainly manufacturing can be profitable and it can grow in this country. But we have to have some fortitude and we have to have some policies that help support that because manufacturing jobs are really—generate, on the order, seven other jobs once they're here. Optimax has high-paying jobs. These are career jobs. You can have cars, put your kids through college. Those types of things. They're not all gone; they are here and they're actually growing. But we have to support that. And we are not the adversary. And the adversary is the global market space, and we are competing against countries with policies that make it very easy to manufacture, and I certainly would be—I can speak for myself and my partner—we would absolutely do what we are doing with Optimax in spite of whatever the rules were and how ridiculous they were. But it would create impediments to our growth and we may not be successful, but that's just the nature of an entrepreneur, not because we're being asked to do it.

Ms. BUERKLE. Thank you. I just do want to comment, Mr. Pollock, if this gives any piece of mind, the Continuing Resolution that we voted on last week did stop the IRS from hiring 10,000 additional employees. So we were able to de-fund those positions.

Mr. POLLOCK. Thank you.

Ms. BUERKLE. With that, I'll yield my colleague Mr. Kelly.

Mr. KELLY. Mr. Mandina, I think it's important, because the general public doesn't understand what—I'm an automobile dealer. That's what I've done for a living. If somebody asked me 2 years ago would you be in Congress, I would say, absolutely not. I'm too busy raising my family and running my business. So I have a little bit of an idea what it's like to deal with OSHA and everybody else that comes into our business and has absolutely no investment but is a partner we don't really need to have on our back.

This ITAR—because I've talked to other people in the same type of business—kind of walk us through what ITAR is and what you have to do in order to compete and why it makes it so difficult for you.

Mr. MANDINA. If a firm in a foreign land who's on a list of—if they're not on a list, it's fine. But most countries are on the list. So Israel, I thought, is a friendly nation. They're on the list.

Ms. BUERKLE. Explain what the list is.

Mr. MANDINA. The list is now—it puts you to another list of questions that you now have to go and process. This is for—we're a OEM manufacturer so we quote things. So we win about 25 percent of what we quote. So we now have to decide if we want to quote something. And so anyway, there's a process. I have to decide whether you want to do the work on 75 percent of the inquiries that you know you're not going to win.

So if it's Israel, we now have to look at—go through the list and ask questions about what is the use of this optic. So we have to go to our customers—and in the technology space, a lot of times they don't want to tell you because it's competitive information. So you have to say what are you using this for; what's the end product; who's our customer—explain to another customer, who's your customer; what country are they in; what are they putting it in? That's kind of ridiculous.

Mr. KELLY. The idea is, if you would, because most people don't understand this. The idea is at the end of the assembly, this product could possibly be used by a terrorist country or be used in a military fashion. So you're responsible for every little piece that goes out somewhere into the world as to finding out where it's actual end use is going to be? Is that—

Mr. MANDINA. That's correct. An example of that could be that it goes into a laser welding machine that is made in France, going to be sold to China. And you can use laser welding equipment to make weaponry. So that's—it's—you just draw the dots. Everything goes everywhere. So, well, ultimately you can make weapons with a lot of things. You need rubber bands to hold the paper together.

Where do you stop? And so you go through that. You ask those questions. You go back and forth, intimidate your customer, make them feel like they're having to divulge information they don't want to give you. Then you quote the job if you think it's—oh—then you can't actually get their license for it until you get the order. And then once you get the order, you then go and ask for permission to sell if they're on that list, and they can say no. And so it takes 4 weeks.

So meanwhile you've gone through the whole dance of going back and forth. You've done the bid. You somehow miraculously got an order. They have to wait to see if you can move on the order or you have to wait until you can move on the order. Then they say no. So meanwhile your customer has gone 8 weeks through the cycle and then they have to start over again because the U.S. Government said this manufacturer cannot sell this to you.

How they make the decisions about what you could sell and what you can't, I really have no idea. It is an absolute crap shoot. And we have decided—we do almost \$20 million worth of business a year. We do almost zero overseas, and we could sell overseas. We get inquiries all the time. We have said no, because we don't want to have to deal with the government—the uncertainty of the government. It takes way too much extra work on our end. We're probably \$5 million worth of business a year that we're just turning our back on because of it.

Mr. KELLY. What agency do you work with—who is responsible for the ITAR? Who does it go through?

Mr. POLLOCK. Department of Commerce.

Mr. KELLY. There's a lot of them. I know it's hard.

Mr. MANDINA. Tell you what. I was really fresh on this a year and a half ago when we decided not to do this. And so—because we're not doing it, it's out of my mind. I'm into growth in the domestic market space.

Mr. KELLY. I think the bottom line of this whole thing, is you're in a business that you have an opportunity to sell a certain product or pieces for a product that's going to be assembled. You now have, because of this overreach, have decided not even to bid that business.

Mr. POLLOCK. Exactly.

Mr. KELLY. I would assume, like everything else in business, time is of the essence. The process that you have to be to go through would be a lot different than a foreign competitor would have to go through. Plus waiting for the licensing, waiting for the

OK, it's just better for you. It's the old story: Don't worry about the mule, just load the wagon. I think at this time, the mule is about ready to walk away.

I appreciate your testimony. I can tell you really, the American public has absolutely no idea what you are going through on this, not only what you are going through with ITAR, but the other regulations. I think that's the one thing we are finding out on a daily basis. We have to find some way of amplifying this problem so that people understand. This isn't just you coming here and complaining because you can't compete. You're coming here talking about a situation that makes it impossible for you to compete and, unfortunately, it's your own country. So I appreciate your—

Mr. POLLOCK. If I can add one more thing. There's another part to that restriction and it has to do with employment. We had 130 people working at Optimax and one was a part-time consultant, Canadian. Because that person did not have a green card and was not a U.S. citizen, we had to put locked cabinets and create a whole infrastructure of security for this dangerous Canadian consultant that we had working, otherwise we were in violation.

The Canadian quit because she didn't feel it was appropriate that we go through all that expense in order to keep her employed. And now most companies in technology, manufacturing companies, will not hire anyone who does not have a green card or is a U.S. citizen. There are a lot of very smart people who are—who don't have green cards, who are not U.S. citizens that could really help generate wealth in this country that we can't hire because we have to put these infrastructures in.

It's most technology manufacturers, certainly in optics, and many machines shops and other places are—do some level of defense work. If you do some level of defense work, you have this other barrier now that's in place.

So there's had a lot of cost around this. I understand the reason too for it. Certainly there's reasons for it, but the way it's structured is so ridiculous, it's actually impeding U.S. exports.

Mr. KELLY. I have friends in Meadville that do the same thing and they're going through the same process and problems. I think what really disturbs all of us is who is it that makes up these lists and what's the criteria for somebody being on the list or not being on the list. And it would be like me selling a car and before I sell the car, I'd have to ask that person: Is there any time in the future that you think anybody could possibly be getting in and out of this car that maybe could be a problem for the country. If I couldn't answer that, I couldn't sell the car.

So I get it and I've got to tell you, it is the scope of overreach and over-involvement that's killing all of this. I appreciate fully. Don't give up on us. We're not going to quit until we get it fixed. Thank you.

Ms. BUERKLE. Thank you all very much. I have one last question and I'm not sure if you have anything left?

Mr. KELLY. I did want to ask Ms. Meinking something.

And I know right now, because of the events in Wisconsin and around the country, there's a renewed interest. And often it's become too polarizing between organized labor in the private sector. I think that's done a tremendous disservice to both sides. And I

would certainly think—we're interested in it. I gotta tell you, I have friends on both sides of it. I have friends that do both.

PLAs are something that a lot of people don't understand. People understand Davis-Bacon, and I think Bacon is a Republican from New York, and Davis is a republican from Pennsylvania. So when people say, "Come on, these Republicans don't like unions," those are the two guys that started it, and they're both Republicans.

As we go forward—and I think we would all agree that bargaining is part of the practice, but bankrupting an entity is not. And if you can't—because I know you are very concerned. I read your testimony with the PLAs. Explain a little bit what that does to you and your ability to bid on a job. You can bid on a job using Davis-Bacon, but with the PLAs that's had a little different. That's more exclusive, is it not.

Ms. MEINKING. That's correct. In fact, if we do bid a job that is a Federal job, we are required, by law, to follow Davis-Bacon rules which, in essence, means that we're paying union scale wages and benefits. And the whole principle, of course, behind Davis-Bacon was to level the playing field, if you will, from a wage standpoint. So when we bid and perform work at the Federal level, we do pay Davis-Bacon wages.

You don't need a PLA to level the playing field from a wage standpoint, because you already have Davis-Bacon or if we're talking New York State, we have New York State prevailing wage. A PLA literally, as I said in my testimony, tells me that I cannot use my own workers. And, quite frankly, we have crews that are supervised by very experienced foremen who work with these people day in and day out. They develop processes and procedures to make us the most effective and cost-effective contractor that we can be. And when we have to put people who have absolutely no vested interest in the success of our business and, in fact, have an invested interest in the shutting down of our business, to eliminate us as competition to their signatory contractors, I mean, it's kind of like asking me to swim through a pool of alligators and hope I don't get bit.

You know, it's ridiculous. And I will honestly tell you that if we see PLA language in a bid, we aren't going to take the time to even bid it. Can we bid it? Absolutely. We can. But it sets up a scenario that, from a business standpoint, it's completely and utterly impractical for us. So we close the specifications and we throw them in the garbage. And unfortunately, that takes away opportunities from our current employees and takes away our opportunity to grow our business using tax-payer-funded projects to do it.

Mr. MANDINA. Could I comment on that as well?

We, like Radec, are a non-union contractor. We have over 200 journeymen. We have a New York State certified apprenticeship program where we're bringing up 24 young men and women into the trades. We are 1 of 9 out of 100 something apprenticeship programs that's non-union in New York State.

Ms. MEINKING. And we are one of the others.

Mr. POLLOCK. Our principle and practice, based on the regulations, is that we simply do not bid any governmental jobs whether they're local, State or Federal. We find our business entirely else-

where, because the compliance issues are immense. It's not that we couldn't do it, it's just it's not cost effective to stay in line.

And in truth, every single governmental job that we have ever done, someone has guaranteed that we were audited. The time spent was pretty humongous, so we backed away from it. So our position maybe is different from theirs, but similar. We just find other work.

Ms. MEINKING. And we do, as well, but quite frankly, in this economy, the private sector has not been building as much as they used to. So in many cases we're forced to look to markets that we might otherwise avoid simply to stay in business.

Mr. KELLY. And the other thing, if you would just comment briefly, because I've been through OSHA audits. And, again, it comes down to the public's awareness of what these mean.

I have always been a little disappointed. I've been through some OSHA reports. Remedial action would be something in my—if you find something wrong in my workplace, I want to make sure it's safe for my guys. One of the things our guys are supposed to wear if they put cars up in the air, they're supposed wear hardhats and goggles.

I don't know if you can mandate common sense in a workplace. I think you can set guidelines, but at the end of the day, I don't know how you get one of the people that works for you to look out for their own good. So having said that, the remedial process is the one that I think is lacking in all these audits.

We used to have something called the Voluntary Protection Plan, which makes sense, which is where you sit down and you talk about these possible problems and how to fix them. I know with OSHA, when they come in and they do an audit, most of these things, there's no cost-benefit analysis. It's just this is wrong, this is wrong, this is wrong, fine, fine, fine. I don't think it accomplishes the same type of an effect that the insurance company coming in trying to help you to eliminate possible losses or dangerous situations in your business to, because they're actually there to do something with you to fix it.

I get the feeling, when I hear folks talk, that the government comes in, the idea isn't to fix it; it's to fine you. So let me know. Am I reading this wrong in my little corner of the world?

Ms. MEINKING. You're reading it exactly correctly. In fact, I will tell you that we recently had an OSHA inspector show up on one of our job sites and—you know, this is an OSHA inspector that we have seen on other job sites. And you're absolutely correct. As an employer, safety is paramount to us. We want to make sure that every one of our people goes home every night to their family. Nothing is more important to us.

We have had an OSHA inspector who has been on a number of job sites, and we are a very safe contractor. We do not have a lot of issues. But this OSHA inspector confided in us that the directive from above from Washington DC is that these inspectors are to go onto job sites and find violations that can result in fines. Because, my understanding is, that it's because OSHA is sort of self funding and they need to generate the revenue to support all these additional inspectors and things that they have decided will be their

approach to safety, as opposed to the programs like the VPP program and things like that.

So it's a complete reversal from, quite frankly, what OSHA used to be in terms of being a collaborative agency. They are now simply looking for ways to generate revenue, and to me, that's counter productive.

Mr. KELLY. Thank you.

Ms. BUERKLE. We had OSHA in and we did hear their testimony, and were able to ask them questions. And we were really struck by the fact, in one of the people—one of the members from OSHA was there, and he mentioned the fact that employers will comply with OSHA regulations in order to prevent a visit because they fear OSHA going onsite to visit their business.

And I said to him, "Fear? This is the United States of America. We shouldn't be fearing government agencies. We should be working with them," as you said, to find and ensure safe work places for our employees. No one cares more about employees than the employers. Not OSHA, but the employers.

So we were struck by the fact that it has changed from being a partnership to work together for safety to this punitive—trying to look for and find for offenses.

Ms. MEINKING. I do think, to a certain degree, it goes back to the mentality that seems to be pervasive in government now, that employers are bad, and they are looking to profit on the backs of their workers at any cost. And I think until we change that mindset, quite frankly, partnerships and collaboration between government and business is going to be hard to accomplish.

Ms. BUERKLE. Well, then, I think a good way to end our first panel here is to say to you, to all of you and all of the businesses in upstate New York that we appreciate you. We appreciate your sacrifice; we appreciate your entrepreneurial spirit. We know that you are the job creators, and we hope you will work with us to continue giving us information we need so we can go back to Washington and begin to create an environment where businesses can do well and be successful and not be penalized for all of their hard work and efforts.

I want to thank all three of you on behalf of Mr. Kelly and myself. Thank you for being here this morning and sharing your testimony here with us.

With that, we'll conclude panel No. 1 and seat our second panel this morning.

Ms. BUERKLE. We will begin the hearing of the second panel.

This morning I'd like to introduce Ms. Cathy Martin. She is the president of Monroe County Farm Bureau; and Mr. Jonathan Taylor, he's owner of Oakridge Dairy; and last, John Teeple, owner of Teeple Farms.

Welcome this morning to our hearing.

It is the custom of Oversight and Government Reform Committee to swear in our panelists, so if you would please stand, raise your right hands.

[Witnesses sworn.]

Mr. KELLY. Let the record reflect that all witnesses answered in the affirmative.

Thank you very much.

Ms. BUERKLE. Ms. Martin, if we could start with you, with your testimony.

Again, thank you all for being here this morning.

STATEMENTS OF CATHY MARTIN, PRESIDENT, MONROE COUNTY FARM BUREAU; JONATHAN TAYLOR, OAKRIDGE DAIRY; AND JOHN TEEPLE, TEEPLE FARMS INC.

STATEMENT OF CATHY MARTIN

Ms. MARTIN. Thank you for the opportunity to testify before you today. I appreciate your time and consideration on these important matters to agriculture.

My name is Cathy Martin and I'm the office administrator for John B. Martin and Sons Farms. We are a 3,000 acre fruit and vegetable farm and have a small on-farm processing operation for cabbage and winter squash.

Both our cabbage and squash operations are labor intensive and we require approximately 100 employees on a seasonal basis and 40 full-time employees. My job has oversight of all aspects of office procedures for the efficient day-to-day running of our farm. In the past few years the most difficult and time-consuming aspect of my job has been working to require legal employees from the Federal H-2A Visa Program.

I'm here today before you to discuss the regulatory impediments to job creation in the northeast. New York has become one of the most heavily taxed and regulated States in the United States and many farms are struggling to stay in business. With all the complications that are currently endured, short growing seasons, extreme and unpredictable weather and labor shortages, it continues to become more difficult to keep farms in business with the constant addition of new regulations. Among these regulatory impediments is that of the H-2A Guestworker Visa Program. This program is intended to supplement farms with foreign labor when there is a domestic labor shortage. However, the complications within the program have largely increased, growing to a level that is causing the program to become unusable.

The H-2A Program was created in 1987 and was not updated until 2008 when the Bush administration made changes that helped growers by streamlining the application process and making the program easier for farmers to use. However, with the new administration coming forward in 2009, these changes were quickly reversed and an even harsher environment for using the program was created with excessive time delays and paperwork burdens.

While immigration issues have become a growing concern across the Nation, agriculture still needs access to a liable, stable, legal work force through a Federal guestworker program. It is vital to my farm that when my application is submitted for use of the H-2A Program that there is a consistency, accuracy and timeliness in execution of the program and process. At this point there are different interpretations of the program rules and this has made compliance increasingly difficult.

While I understand there must be proper paperwork and documentation in this process when I specify a date of need for my workers on the application, it is often overlooked and not met by

the U.S. Department of Labor. These extreme delays have caused a loss of—loss in my crops as workers have not been available to plant, pick or do essentially work on the farm that is crucial to staying in business.

Processing problems have repeatedly occurred in the National Processing Center in Chicago. Within the past year there have been an abnormally large deficiencies and denials of H-2A certificates. Many of the deficiencies and denials have involved requests for experienced workers within specific employee classifications of a job order, reference requirements, temporary and seasonal work and a differing interpretation based on prevailing practices—surveys that are conducted by the State Department of Labor with inconsistent results. These difficulties cause delays in the process and force farmers, in desperate need of workers, to engage in costly, stressful and time-consuming administrative appeals. This is a huge burden on the farmer especially when most of these appeals have been ruled in favor of the farmer.

When an employer is filing their H-2A job order, there are sections that include a description of the employee's job duties. Also included is a section stating the level of experience required to be able to sufficiently complete the job description. These types of employee requirements can vary from farm to farm and depend on numerous factors:

The farm is able to provide more training, therefore, they are able to lower the amount of experience required by the farmer.

Different modes of production vary from farm to farm and not all requirements are the same. For example, when apples are picked for fresh market, it requires more experience and delicacy than when apples are picked for processing.

And similar to other job qualifications outside of farming, there are times when a job description may have different requirements from year to year—job expectations can change and farms should be allowed to determine what is necessary on their farm.

However, when applications are sent through, the regulatory requirements of this program force farms into a “one size fits all” scheme. That makes it extremely difficult for my farm to fulfill requirements for the application process and ensure that we will have access to labor that will accurately and safely complete the job order.

Farmers must advertise for workers in three separate States to demonstrate that they cannot find domestic labor. Advertisements in newspapers must be for a specific number of days and on specific days of the week. This advertising adds expense and time to the application process. Farmers seldom recruit domestic workers through this process and almost never from further away than the local area even given the recent high rates of unemployment.

While I understand the need of foreign workers must be demonstrated to access the program, these advertising requirements must be adjusted to be a procedure that actual employers would reasonably undertake with an ability to recruit potential domestic workers. At its current level, the recruitment requirements are unrealistic.

The regulatory process of the H-2A Program also creates problems with its restrictive definitions and limited use of program for

certain industries within agriculture. Dairy and other livestock farmers, who have a year round rather than a seasonal need for labor, are not able to access the program because they're not included in the agricultural employment definition. However, they face the same challenges in recruiting reliable workers as fruit and vegetable farms.

Additionally, farmers cannot use H-2A workers for incidental employment. On my farm there are a large variety of tasks that must be done to keep the operation running. It is unrealistic to expect one worker to only complete one task throughout his or her entire employment period. Coupled with illnesses or days off for other employees, at times there are situations that require workers to pick up extra tasks to get the needed jobs done. Allowing H-2A workers to do these incidental tasks while employed by a farm would be extremely helpful and common sense. Expanding these definitions will allow for a stronger and more efficient use of workers during their employment, while at the same time, creating stronger work force on the farm.

Prevailing Practice Surveys are distributed yearly by each State in the United States as required by the H-2A Program—to farmers based on their commodity, asking detailed questions about farm practices and labor experience. These surveys have caused complications at both the State and the U.S. Department of Labor as the survey develops a standard for employment and allows applications to be denied if farms deviate from the norm.

It is not appropriate to determine that all agricultural operations will have standard needs across an entire State. Every farm is unique and will have different requirements and job positions in its application depending on its needs.

All these factors, including others, have caused great complications within the H-2A system through the past years and, specifically, over the past 3 years. The regulatory burdens that complicate this program have hindered job creation, not helped to create a usable work force within agriculture. While farms utilize all attempts possible to bring in domestic workers, there comes a point when the H-2A Program becomes crucial to gaining foreign workers.

If we don't have a reliable work force in agriculture to plant, pick, cultivate and tend to animals, then our farms will not survive and job creation throughout New York and the United States will fail. For every one job on a farm there's a ripple effect that creates three more jobs off the farm.

With coordination these are problems that can be fixed to create a usable guestworker program for agriculture. As these problems are fixed, farms will be able to spend more time directly working with their employees and tending to the crops and animals. This opens up opportunities for a strong business environment and a successful work force on my farm and off the farm as well.

I look forward to working with the committee on these important issues. I truly appreciate the opportunity to express these concerns with you and hope to continue this dialog in the future. During a time of such economic concern, it is important to discuss the potential for a stronger, more reliable agricultural sector which, in turn, will create recovery.

Thank you for the time to discuss this regulatory impediment on job creation and potential solutions that could be addressed to lessen the burdens.

Ms. BUERKLE. Thank you, Mrs. Martin.

[The prepared statement of Ms. Martin follows:]



Statement of the New York Farm Bureau

**To the House Committee on Oversight and Government
Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight
and Government Spending**

**“Regulatory Impediments to Job Creation in the Northeast”
Complications with the H-2A Program**

**Presented by Cathy Martin
New York Farm Bureau**

Wednesday, April 20, 2011

Thank you for the opportunity to testify before you today; I appreciate your time and consideration on these important matters. My name is Cathy Martin and I am the Office Administrator for John B. Martin and Sons Farms, Inc. We are a 3000 acre fruit and vegetable farm and have a small on-farm processing operation for cabbage and winter squash. Both our cabbage and squash operations are labor intensive and we require approximately 100 employees on a seasonal basis and 40 full time employees. My job has oversight of all aspects of office procedures for the efficient day to day running of our farm. In the past few years the most difficult and time consuming aspect of my job has been working to acquire legal employees through the Federal H2A program.

I am here before you today to discuss the regulatory impediments to job creation in the northeast. New York has become one of the most heavily taxed and regulated states in the US and many farms are struggling to stay in business. With all the complications that are currently endured - short growing seasons, extreme and unpredictable weather, and labor shortages - it continues to become more difficult to keep a farm in business with the constant addition of new regulations.

Among these regulatory impediments is that of the H-2A program; the Agricultural Guestworker Visa Program. This program is intended to supplement farms with foreign labor when there is a domestic labor shortage is endured. However, the complications with the program have largely increased - growing to a level that is causing the program to become unusable.

The H-2A program was created in 1987 and was not updated until 2008 when the Bush administration made changes that helped growers by streamlining the application process and making the program easier for farmers to use. However, with a new administration coming forward in 2009, these changes were quickly reversed and an even harsher environment for using the program was created, with excessive time delays and paperwork burdens. While immigration issues have become a growing concern across the nation, agriculture still needs access to a reliable, stable, legal workforce through a federal guest worker program.

It is vital to my farm that when my application is submitted for use of the H-2A program that there is consistency, accuracy and timeliness in execution of the program and process. At this point, there are different interpretations of the program rules and this has made compliance increasingly difficult.

While I understand there must be proper paperwork and documentation in this process, when I specify a date of need for my workers on the application it is often overlooked and not met by the US Department of Labor. These extreme delays have caused a loss in my crops as workers have not been available to plant, pick, or do essential work on the farm that is crucial to staying in business.

Processing problems have repeatedly occurred at the National Processing Center in Chicago. Within the past year there has been an abnormally large number of deficiencies and denials of H-2A certifications. Many of the deficiencies and denials have involved requests for experienced workers within specific employee classifications of a job order, reference requirements, temporary and seasonal work and a differing interpretation based on prevailing practices (surveys that are conducted by the State Department of Labor with inconsistent results). These difficulties cause delays in the process and force farmers, in desperate need of workers, to engage in costly, stressful, and time consuming administrative appeals. This is a huge burden on the farmer, especially when most of these appeals have been ruled in favor of the farmer.

Employee Classifications Under a Job Order:

When an employer is filing their H-2A job order there are sections that include a description of the employee's job duties. Also included is a section stating the level of experience required to be able to sufficiently complete the job description. These types of employee requirements can vary from farm to farm depending on numerous factors:

1. The farm is able to provide more training, therefore they are able to lower the amount of experience required by the worker.
2. Different modes of production vary from farm to farm and not all requirements are the same. For example, when apples are picked for fresh market it requires more experience and delicacy than when apples are picked for processing.
3. As similar to other job qualifications outside of farming, there are times when a job description may have different requirements from year to year – job expectations can change and farms should be allowed to determine what is necessary on their farm.

However, when applications are sent through, the regulatory requirements of this program force farms into a "one size fits all" scheme. This makes it

extremely difficult for my farm to fulfill requirements for the application process, and ensure that we will have access to labor that will accurately and safely complete the job order.

Reference/Recruiting Requirements:

Farmers must advertise for workers in three separate states to demonstrate that they cannot find domestic labor. Advertisements in newspapers must be for a specific number of days and on specific days of the week. This advertising adds expense and time to the application process. Farmers seldom recruit domestic workers through this process—and almost never from further away than the local area—even given recent high rates of unemployment.

While I understand that need of foreign workers must be demonstrated to access the program, these advertising requirements must be adjusted to be a procedure that actual employers would reasonably undertake with an ability to recruit potential domestic workers. At its current level, the recruitment requirements are unrealistic.

Temporary and Seasonal Work:

The regulatory process of the H-2A program also creates problems with its restrictive definitions and limited use of the program for certain industries within agriculture. Dairy and other livestock farmers, who have a year-round, rather than seasonal need for labor, are not able to access the program because they are not included in the agricultural employment definition. However, they face the same challenges in recruiting reliable workers as fruit and vegetable farms.

Additionally, farmers cannot use H-2A workers for incidental employment. On my farm there are a large variety of tasks that must be done to keep the operation running. It is unrealistic to expect one worker to only complete one task throughout his or her entire employment period. Coupled with illnesses or days off for other employees, at times there are situations that require workers to pick up extra tasks to get the needed jobs done. Allowing H-2A workers to do these incidental tasks while employed by a farm would be extremely helpful and common sense. Expanding these definitions will allow for a stronger and more

efficient use of workers during their employment, while at the same time creating a stronger workforce on the farm.

Prevailing Practice Survey:

Prevailing Practice Surveys are distributed yearly by each state in the U.S. - as required by the H-2A program - to farmers based on their commodity, asking detailed questions about farm practices and labor experience. These surveys have caused complications at both the State and U.S. Departments of Labor as the survey develops a standard for employment and allows applications to be denied if farms deviate from the norm.

It is not appropriate to determine that all agricultural operations will have standard needs across an entire state. Every farm is unique and will have different requirements and job positions in its application depending on its needs.

All of these factors, including others, have caused great complication within the H-2A system through the past years, and specifically, over the past three years. The regulatory burdens that complicate this program have hindered job creation, not helped to create a usable workforce within agriculture. While farms utilize all attempts possible to bring in domestic workers, there comes a point when the H-2A program becomes crucial to gaining foreign workers.

If we don't have a reliable workforce in agriculture to plant, pick, cultivate, and tend to animals, then our farms will not survive and job creation throughout New York, and the US, will fail. For every one job on a farm, there is a ripple effect that creates three more jobs off the farm (manufacturing, mechanic, tourism, etc).

With coordination, these are problems that can be fixed to create a usable guestworker program for agriculture. As these problems are fixed, farms will be able to spend more time directly working with their employees and tending to the crops and animals. This opens up opportunities for a strong business environment and a successful workforce on my farm, and off the farm as well.

I look forward to working with the committee on these important issues. I truly appreciate the opportunity to express these concerns with you and hope to continue this dialog in the future. During a time of such economic concern, it is important to discuss the potential for a stronger, more reliable agricultural sector, which in turn, will create jobs in all parts of the economy and help our recovery.

Thank you for the time to discuss the regulatory impediments on job creation and potential solutions that could be addressed to lessen the burdens. I would be happy to take any questions you may have at this point.

Ms. BUERKLE. Mr. Taylor.

STATEMENT OF JONATHAN TAYLOR

Mr. TAYLOR. Good morning and thank you for allowing me to testify before you here today.

I am before you as a dairy farmer and a representative of the New York Farm Bureau, the State's largest general farm organization. New York Farm bureau represents nearly 30,000 family farm members and I represent the members of the Finger Lakes region, including orchards, vineyards and wineries, vegetable growers and other dairies.

I'm a fourth-generation dairy farmer and agriculture has fundamentally changed from my father's generation. More than ever, family farms, like where I work, must recognize and adapt to my generation's new realities—volatility in the global marketplace, increasing energy costs, and a relentless regulatory burden being placed on the farm community. Whether as a blunt sledgehammer or micromanaging guardian, overzealous regulation is killing our family farms, depriving it of any potential for growth and eroding our local food infrastructure.

Without question, producers of all sizes and sectors identify the myriad of regulatory stresses from the Federal and State level as the No. 1 obstacle to business growth, profitability, and in some cases, business survival. Government mandates have become a tangible barrier to our farm families being able to pass their business on to future generations as they compete with foreign competitors who do not have to tolerate such rigorous and expensive regulations. No one wants lesser quality food from questionable sources, like China, but with the diminishing number of farms in New York State due to a hostile regulatory climate, who will be left standing to fill in the food gap? If food security, public health and accessibility to local, nutritious, high quality foods are Federal priorities, then something must be done to reign in the many regulations that demand extremely high compliance costs from family farms with very little environmental, public health or any other beneficial gain.

New York's family farms are experiencing an unprecedented level of Federal regulatory and agency oversight in the sectors of environmental management, labor and food safety. Much of this regulatory activity is being seen in the form of broad-based mandates that do not take into account existing Federal and State regulatory and voluntary programs and, most importantly, do not take into account their success record on the ground.

While simplistic in theory and implementation, such mandates are counterproductive in providing effective solutions for each specific State and waste the limited resources of farmers, taxpayers and government agencies. For example, the original draft to the Chesapeake TMDL would have discounted the progressive best management practices [BMPs] farmers have installed under the State's Agricultural Environmental Management program and replaced them with less effective and more expensive protocols that work against New York's unique landscape and agricultural traits. In cases like these, farmers think government should follow the common-sense adage, "If it's not broken, don't fix it."

In the last 6 months alone, New York Farm Bureau has invested a great deal of time and resources on a number of regulatory and agency policies that comprehensively will drive New York family farms, particularly smaller farms, out of business. For example, the Chesapeake Bay TMDL; NRCS Nutrient Management Practice Standard Code 590; Greenhouse Gas Regulation; Duplicate pesticide permitting under the Clean Water Act; FDA Milk Residue Sampling Assignment; Web based pesticide labeling; Protection of dairy product identity; Exclusion of certain vegetables from the school lunch program.

Today I will address three of the most urgent issues:

The EPA has brought agricultural industry under intense scrutiny for its environmental sustainability. Continually improving water quality and the environmental conservation is a paramount priority for New York farmers. While we support the EPA's intent of improving water here in New York and nationwide, we do feel that their reasoning and methodology in development and implementation of certain regulations lack a foundation in sound science and ignore inherent State-specific factors that will influence compliance like seasonality and topography. These regulations also fail to produce any environmental gain outside of what can already be achieved through alternate, less costly means that have proven to be equally effective.

I offer the following examples: To improve and restore quality in the Chesapeake Bay, the EPA developed a regulatory framework called the Total Maximum Daily Load [TMDL]. For New York and the other five States with waters entering the Chesapeake Bay.

The EPA's draft TMDL was inequitable, unattainable and threatened the livelihood of all 900 farms in New York and the Chesapeake Bay area without markedly improving the water quality for the bay. The EPA's proposed TMDL imposes disproportionately stringent restrictions and requirements on New York's farm industry at a cost of billions of dollars in order to help other States meet their overall TMDL goal.

If intervention was not made by New York Farm Bureau, other partners and our congressional delegation, the final TMDL, the farm community would have seen small farms put out of business and those remaining would have seen large increases in costs, staff, time and red tape to adhere to the restrictions.

The NRCS Practice Standards provide a suite of tools for farm site-specific solutions for sustainable environmental management. In the past, these guidance documents were usually found on practical, science-based approaches that do not place undue burden on farm families. NRCS stepped away from this philosophy with several policy revisions that abandon scientific justification in place of a one-size-fits-all mandate. Particularly New York Farm Bureau strenuously opposes the NRCS proposal to implement a national calendar ban on nutrient spreading for farms of all sizes and management levels. A one-size-fits-all Federal practice standard cannot replicate nutrient use efficiencies, optimum crop response and environmental gain that Cornell University on-farm research and trial results have provided to New York farmers to inform their farm management and business planning decisions.

New York Farm Bureau requests that the committee intervene with NRCS to withdraw this overreaching policy.

Greenhouses Gases: The EPA is using the authority under the Clean Air Act to regulate greenhouse gases. Dairy farms with 25 cows or more would be considered a major source of emissions forced to pay an annual permitting fee of \$175 per cow. The average dairy size in New York is 100 cows. So we have more than 3,300 dairy farms in New York State that would have to pay this tax under the EPA greenhouse gas ruling. EPA itself estimates that 37,000 farms nationwide would be impacted at an average annual fee of \$23,000. In New York we have farms that would pay in excess yearly of \$300,000 for this tax. It's really difficult, if not impossible, for farmers to control the amount of emissions from their animals. A natural process for this regulation is equivalent to a cow-tax penalty just for growing food. This kind of regulation by the EPA on farms is not going to provide a positive impact on greenhouse gas on this country. Instead it's going to be another barrier, another expense for farmers like myself who are just trying to put milk or other food on the table.

Another barrier our farmers are facing is duplicative pesticide permitting structure that EPA has been forced into by a court decision in January 2009. This court ruling forces applicators to get a National Pollutant Discharge Elimination System permit under the Clean Water Act in addition to the usual Federal Insecticide, Fungicide and Rodenticide Act [FIFRA].

Previously, pesticides governed by FIFRA were exempt from regulation under the CWA because they go through extensive testing before they are allowed in the market and applicators must receive thorough training and follow label guidelines before they can apply pesticides. Farmers complying with FIFRA were never intended to be required to receive duplicative permits. It's like asking someone to have two drivers in the same State. This duplicative pesticide permit only adds cost and credit burden on the farmer, opens them up to citizen lawsuits and there are no additional environmental benefits.

A bill to correct this H.R. 872 was recently passed in the House of Representatives, but we must ensure that this actually becomes law to protect farmers from this perversion of the Clean Water Act.

And going forward, as Congress takes up environmental, labor, food safety and financial/tax legislation, please be judicious in your consideration and hold our farm businesses harmless from overreaching policy. If my children choose to carry on as the fifth-generation family farm to produce food, I hope together that we can work to make that happen.

Thank you for your time to speak with you today. We appreciate your immediate attention and concrete actions to assist farm families.

Ms. BUERKLE. Thank you very much, Mr. Taylor.

[The prepared statement of Mr. Taylor follows.]



**Statement of the
New York Farm Bureau**

**To the House Committee on Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight
and Government Spending**

“Regulatory Impediments to Job Creation in the Northeast”

**Presented by Jonathan Taylor, Board Member;
New York Farm Bureau**

Wednesday, April 20, 2011

Thank you for inviting me to testify before you today. My name is Jonathan Taylor and I address you as a dairy farmer and Board Member of the New York Farm Bureau, the state's largest general farm organization. New York Farm Bureau represents nearly 30,000 family farm members and I represent the members of the Finger Lakes region, including orchards, vineyards and wineries, vegetable growers and other dairies.

I'm a fourth-generation farmer and agriculture has fundamentally changed from my father's generation. More than ever, family farms, like where I work, must recognize and adapt to my generation's new realities – volatility in the global marketplace, increasing energy costs, and a relentless regulatory burden being placed on the farm community. Whether as a blunt sledgehammer or micromanaging guardian, overzealous regulation is killing our family farms, depriving it of any potential for growth and eroding our local food infrastructure.

Without question, producers of all sizes and sectors identify the myriad of regulatory stresses from the federal and state level as the #1 obstacle to business growth, profitability, and in some cases, business survival. Government mandates have become a tangible barrier to our farm families being able to pass their business on to future generations as they compete with foreign competitors who do not have to tolerate such rigorous and expensive regulations. No one wants lesser quality food from questionable sources, like China, but with the diminishing number of farms in New York State due to a hostile regulatory climate, who will be left standing to fill in the food gap? If food security, public health and accessibility to local, nutritious, high quality foods are federal priorities, then something must be done to reign in the many regulations that demand extremely high compliance costs from family farms with very little environmental, public health or any other beneficial gain.

New York's family farms are experiencing an unprecedented level of federal regulatory and agency oversight in the sectors of environmental management, labor and food safety. Much of this regulatory activity is being seen in the form of broad-based mandates that do not take into account existing federal and state regulatory and voluntary programs and, most importantly, do not take into account their success record on the ground. While simplistic in theory and implementation, such mandates are counterproductive in providing effective solutions for each specific state and waste the limited resources of farmers, taxpayers and government agencies. For example, the original draft Chesapeake Bay TMDL would have discounted the progressive best management practices (BMPs) farmers have installed under the State's Agricultural Environmental Management program and replaced them with less effective and more expensive protocols that work against NY's unique landscape and agricultural traits. In cases like these, farmers think government should follow the common-sense adage, "If it's not

broken, don't fix it."

In the last six months alone, NYFB has invested a great deal of time and resources on a number of regulatory and agency policies that comprehensively will drive New York family farms, particularly smaller farms, out of business:

- Chesapeake Bay TMDL
- NRCS Nutrient Management Practice Standard Code 590
- Greenhouse Gas Regulation
- Duplicative pesticide permitting under the Clean Water Act
- FDA Milk Residue Sampling Assignment
- Web based pesticide labeling
- Protection of dairy product identity
- Exclusion of certain vegetables from the school lunch program

I will not comment on all of these, but I will highlight a few of the more urgent issues.

ENVIRONMENTAL MANAGEMENT

The Environmental Protection Agency has brought the agriculture industry under intense scrutiny for its environmental sustainability. NYFB's family farm members, like me, have a significant and continued interest in any efforts and actions that impact the environmental and economic sustainability of New York's farmland. Continually improving water quality and environmental conservation is a paramount priority of New York farmers. While we support the Environmental Protection Agency's intent of improving water quality in New York and across the nation, we do feel that their reasoning and methodology in development and implementation of certain regulations lack a foundation in sound science and ignore inherent state-specific factors that will influence compliance (i.e. seasonality, topography, etc.). These regulations also fail to produce any environmental gain outside of what can already be achieved through alternate, less costly means that have proven to be equally effective. I offer the following examples.

Chesapeake Bay TMDL

To improve and restore water quality in the Chesapeake Bay, which provides the drinking water for Washington D.C. and Baltimore, the EPA developed a regulatory framework requiring reductions in nitrogen, phosphorous and sediment from six states, including New York, whose waters feed into the Chesapeake Bay and comprise the Chesapeake Bay watershed. This regulation, the Chesapeake Bay Total Maximum Daily Load (TMDL), laid out EPA's strategy to assess, plan and execute nutrient load reductions in order to meet EPA's final water quality goals for the Bay.

The EPA's draft TMDL was inequitable, unattainable and threatened the livelihood of all 900 farms within New York's portion of the Chesapeake Bay watershed without markedly improving water quality for the Chesapeake Bay. EPA's proposed TMDL imposed disproportionately stringent restrictions and requirements on NY's farm industry at a cost of billions of dollars in order to help other states meet their overall TMDL goal. Most glaring was EPA's lack of accreditation that New York's water within its boundaries of the Bay watershed was proven to be clean according to water chemistry testing by the US Geological Survey. These distortions can be attributed to several factors, including lack of consideration for New York's progressive agricultural environmental conservation programs and their proven track record for over a decade, lack of consultation with state academic and professional experts, but most of all it was the EPA's lack of understanding of New York agriculture and its inherent uniqueness (i.e. soil types, topography, seasonality, etc.) that made the TMDL a counterproductive mandate for New York. (NYFB's detailed response to the EPA's draft TMDL is available on our website or upon request).

If intervention was not made by NYFB, other partners and our Congressional delegation, the farm community would have seen small farms put out of business and very large increases in business costs, staff time and red tape for the remaining farms to comply with a one-size-fits-all federal regulation that is poorly-suited to New York agriculture, ignored the successful conservation programs that already existed and elevated other state's interests at the expense of our farm community. In late December 2010, the EPA accepted New York's Watershed Implementation Plan (WIP), the on-the-ground strategy to reduce nutrients in agricultural runoff in New York's portion of the Chesapeake Bay watershed. Because of NYFB's efforts, this documented strategy commits agriculture to continue in the State's aggressive agricultural conservation programs with no new federal requirements being made of New York's farms.

This does not mean that the farm community is safe from further damage from this federal mandate. Substantial funding is needed for the State's agricultural conservation programs to continue to serve in the needed, expanded capacity. EPA continues to have the authority to discount the significant investments and achievements New York farmers have already made to improve water quality, well beyond the investments and management practices implemented in other states and absent any federal mandate. NYFB continues to be vigilant as Phase II of the TMDL is currently being carried out which focuses on implementation. NYFB will be working closely with EPA, NYS DEC and other partners to ensure that family farms continue to be held harmless from further regulatory consequences if NYS continues to honor their WIP commitments.

Lastly, to contest EPA's overreach, our national organization, the American Farm Bureau Federation (AFBF) is challenging EPA's TMDL authority under the Clean Water Act in a Pennsylvania district court. EPA's TMDL sets a dangerous precedent that EPA may establish the Chesapeake Bay TMDL and TMDLs in other areas of the country without Congress' legislative authority, which is contrary to the legislative intent of the CWA. This lawsuit does not stall or disrupt the current TMDL from moving forward and all Chesapeake Bay watershed jurisdictions, including New York State, are moving ahead with implementing their WIP. It is expected that court proceedings will progress throughout 2011.

NRCS Nutrient Management Practice Standard Code 590

NRCS Practice Standards provide the suite of tools for farm-site specific solutions for sustainable environmental management. In the past, these guidance documents were usually founded on practical, science-based approaches that do not place undue burden on farm families. NRCS stepped away from that philosophy with several policy revisions that abandon scientific justification in place of a one-size-fits-all mandate that potentially contradicts effective environmental sustainability for New York agriculture. Particularly, NYFB strenuously opposes NRCS' proposal to implement a national calendar ban on nutrient spreading for farms of all sizes and management levels. A one-size-fits-all federal practice standard cannot replicate nutrient use efficiencies, optimum crop response and environmental gain that Cornell University on-farm research and trial results have provided to New York farmers to inform their farm management and business planning decisions. Secondly, the agriculture industry will more readily and quickly adopt proven practices with demonstrable environmental and economic benefits than a minimal federal requirement designed to accommodate the worst offender. NYFB requests that the Committee intervene with NRCS to withdraw this overreaching policy.

Greenhouse Gas Regulation

EPA is also using the authority of the Clean Air Act to regulate greenhouse gases. Because of the thresholds detailed in the Clean Air Act, EPA will be regulating farms, ranches, small businesses, hospitals, schools and even large homes which emit 100 tons of carbon dioxide or nitrogen a year.

Dairy farms with as few as 25 cows will be considered a "major source" of emissions and forced to pay an annual permitting fee which is expected to be a \$175 tax per cow. The average dairy size in New York is 100 cows, so more than 3,300 dairies alone will be impacted. EPA itself estimates that more than 37,000 farms in the U.S. will be paying an average permitting fee of \$23,000 annually. However, some New York dairies will be paying more than \$300,000 annually.

It's really difficult—if not impossible—for farmers to control the amount of “emissions” from their animals, a natural process, so this regulation is equivalent to a cow tax, a penalty just for growing food.

The Clean Air Act was never meant to regulate such common gases as carbon dioxide or methane, which are distributed around the globe. Instead, Congress is the appropriate body to formulate the nation's policy on greenhouse gases, not EPA, as a coordinated world policy is the only way to truly impact greenhouse gases and climate change.

This kind of regulation by EPA on farms is not going to provide a positive impact on greenhouse gases in this country. Instead, it is going to be another barrier and another expense for farmers like myself that are just trying to put milk—and other food—on the table.

Duplicative Pesticide Permits

Another barrier our farmers are facing is the duplicative pesticide permitting structure that EPA has been forced into by court decision. This ruling forces applicator to get a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA) in addition to the usual Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Previously, pesticides governed by FIFRA were exempt from regulation under the CWA because they go through extensive testing before they are allowed on the market and applicators must receive thorough training and follow label guidelines before they can apply pesticides. Farmers complying with FIFRA were never intended to be required to receive duplicative permits—it's like asking someone to get two driver's licenses in the same state. This duplicative pesticide permit only adds cost and bureaucratic burden on the farmer, opens them up to citizen lawsuits, and there are no additional environmental benefits. In New York, there isn't even a NPDES permit available that farmers could receive to be in compliance.

A bill to correct this problem, H.R. 872, has already passed the House of Representatives, but we must ensure that this actually becomes law to protect farmers from this perversion of the Clean Water Act.

CLOSING

NYFB does believe that there are opportunities for regulatory and agency policy to bolster the farm community such as USDA finally requiring dairy importers to pay a promotion assessment that domestic producers are already compelled to pay. Before this action, U.S. producers were

paying to market their competitor's milk and dairy products. These proactive, common sense regulations that bring parity to the marketplace are to be encouraged.

Going forward, as Congress takes up environmental, labor, food safety and financial/tax legislation, please be judicious in your consideration and hold our farm businesses harmless from overreaching policy. If my children choose to carry on as the fifth generation in our family to produce food, I hope that together, we can help them have the opportunity to do that.

NYFB looks forward to working with you and Committee staff on what I know is a common objective: ensuring the stability and long-term viability of agriculture here in New York and nationwide.

Thank you for giving me the opportunity to speak to you today. We appreciate your immediate attention and concrete actions to assist our farm families. I would be happy to answer any questions you may have at this time.

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Ms. BUERKLE. Mr. Teeple.

STATEMENT OF JOHN TEEPLE

Mr. TEEPLE. Thank you and good morning. Thank you for the opportunity to share with you some of the concerns of the apple industry.

My name is John Teeple. We are apple growers in Wayne County. We have been in business for over 50 years. I'm the third generation. I have two nephews who are going to be fourth generation. We are also part owners of Lake Country Storage. It's apple storage that involves 10 other farms and we store 1½ million bushels of apples. We are also part owners of the Empire Fruit Growers Coop, another farm coop and packing facility. I've also served on the Board of the New York Apple Association and currently on the U.S. Apple Association.

On our farm we have 12 full-time people, and during the harvest season we will ramp up to around 65 people. At our packing line and storage facilities we employ approximately 35 full-time people.

I'd like to focus on two issues that I think Mrs. Martin and Mr. Taylor have done a great job on highlighting some of those already. Mrs. Martin talked about labor. Labor is probably the biggest issue for fruit and vegetable farms in the United States. We need a reliable, legal labor force in this country. The apple industry is a world market. We ship apples all over the United States as well as export apples to other countries. If we are to keep the apple industry in New York, we must remain competitive. New York State needs approximately 8,000 workers for about 8 weeks to harvest the apple crop of 30 million bushels.

We need a unique labor force to harvest these apples. It must be physically fit. Picking apples is hard work. They must be dependable and work 8 to 9 hours per day, 6 days a week. Apples are very time-sensitive and must be picked at the proper time. They must have the ability to spot pick apples for color and size and not to bruise them, so it's a specialized labor force. There's not many people that meet that criteria and are waiting for us to give them a job for 8 weeks in the fall, and certainly not 8,000 when we need them.

At the same time that we are starting the apple harvest, all of the other apple-related businesses are also gearing up, the packing lines, the storages, the processing plants like Motts. Most of our local people prefer these jobs as they're more long-term, usually 45 to 50 weeks.

So to meet our needs we have to attract migrant labor workers from around the country. We do this by paying them well and giving them free housing. We pay by-the-piece rate, which equates to about \$10 to \$15 per hour, plus the value of free housing and utilities which is another \$3 per hour.

Much of the employment documentation we are given at the time of hiring turns out later to be inadequate. This puts the employer in a position of having to terminate the employee and possibly face stiff fines, or we have to use the off-shore labor program, H-2A, which Mrs. Martin detailed very well. The H-2A Program is administered by the Department of Labor, is very expensive, it's cum-

bersome, it's very restrictive as to the use of the workers and it's unpredictable as to the timing of when we will receive our workers.

We need agricultural labor reform in this country. Something like the AgJOBS bill that has been introduced in the past. We need a legal, migratory work force that's willing and able to move where the crops need to be harvested. We are quickly approaching the turning point in this country. If we are not allowed to import labor to harvest our fruits and vegetable, we will be importing our fruits and vegetables.

My second point: Exports play a critical role in the economic vitality of the American apple industry. Promotion programs established under the Farm Bill help maintain and increase overseas apple sales. Under these programs, the U.S. apple growers partner with U.S. Department of Agriculture to increase consumption of U.S. apples overseas. American apples are grown commercially in over 30 States. Our \$2.2 billion crop is produced on approximately 350,000 acres of orchards. This means that over one in every \$3 in apple revenue comes from exports. Our overseas apple sales are critical to our orchards and the entire apple industry.

The America Access Program referred to as MAP, and the Technical Assistance For Specialty Crops Program and the Emergency Emerging Markets Program are part of USDA farm bill. The industry provides matching funds for the MAP program. These are good programs, vital to our industry.

I would urge your continued support for these programs in the new farm bill. I would welcome any questions that you have at this time and thank you for the opportunity.

[The prepared statement of Mr. Teeple follows:]

From: John Teeple

Resume: I'm a third generation apple grower. I have been growing apples full time for the past 36 years. I am a past president of the New York Apple Association and past president of the United States Apple Association. I have served on the North Rose Wolcott School Board as vice president. I am a life time member of the North Rose United Methodist Church. My wife and I have three grown daughters and three grandsons. We have always had an active interest in our community and industry.

To: Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending New York field hearing

Representative Ann Marie Buerkle (NY-25)

From: John Teeple

Subject: Testimony for the Oversight Field Hearing April 20, 2011 at the Irondequoit Town Hall

First, thank you for the opportunity to share with you some of the concerns of the apple industry.

My name is John Teeple; we are apple growers in Wayne county NY. We have been in business for over 50 years. We are also part owners of Lake Country Storage (an apple storage owned by 10 farms storing over 1.5 million bushels of apples), and Empire Fruit Growers Co Op (a fresh apple packing facility). I have also served on the board of NY Apple Growers Association, and I am currently on the board of US Apple Association.

I would like to focus on two issues today.

First, the need for a reliable, legal, labor force for agriculture.

Second, the need for continued funding of apple programs in the 2012 Farm Bill.

The apple industry is a world market. We ship apples all over the United States as well as export to other countries. If we are to keep the apple industry in New York State, we must remain competitive.

New York State needs approximately 8000 workers for about 8 weeks to harvest the apple crop of 30 million bushels. We need a unique labor force to harvest these apples:

They must be physically fit – apple picking is hard work.

They must be dependable and able to work 8 to 9 hours per day and 6 days per week. Apples are very time sensitive and must be picked at the proper time.

They must have the ability to spot pick apples for color and size and not burse them.

There are not many people that meet that criteria and are waiting for us to give them a job – and certainly not 8000. At the same time we are starting apple harvest, all of the other apple related businesses are also gearing up (packing lines, storages, processing plants like Motts). Most of our local people prefer these jobs as they are more long term (usually 40 to 45 weeks). So to meet our labor

needs, we have to attract a migrant worker from around the country. We do this by paying them well and giving them free housing. We pay by the piece rate – equated to hourly pay from \$10 to \$15 per hour, plus the value of free housing and utilities – worth another \$3 per hour. Much of the employment documentation we are given at the time of hiring turns out later to be inadequate. This puts us the employers in the position of having to terminate the employee and possibly face stiff fines.

Or, we have to use the off shore labor program H-2A. The H-2A program is administered by the US Department of Labor and is very expensive, cumbersome, restrictive as to the use of the workers, and unpredictable as to the timing of receiving workers.

We need agricultural labor reform in this country. Something like the AgJOBS bill that has been introduced in the past. We need a legal migratory work force that is willing and able to move to where the crops need to be harvested. We are quickly approaching a turning point, if we are not allowed to import labor to harvest our fruits and vegetable crops, these crops will move to other countries and we will have to import our food.

My second point:

Exports play a critical role in the economic vitality of the American apple industry. Promotion programs established under the Farm Bill help maintain and increase overseas apple sales. Under these programs, U.S. apple growers partner with the U.S. Department of Agriculture (USDA) to increase consumption of U.S. apples overseas.

American apples are grown commercially in over 30 states. Our \$2.2 billion crop is produced on approximately 350,000 acres. U.S. apple exports reached almost \$800 million in 2009, or 40 percent of our total crop value. This means that over \$1 in every \$3 dollars in apple revenue comes from exports. Overseas apple sales are critical for our orchards and the entire apple industry. The market Access Program (MAP), the Technical Assistance for Specialty Crops Program and the Emerging Markets Program are part of the USDA's Farm Bill. The industry provides matching funds for the MAP program. These are good programs, vital to our industry. I would urge your support for these programs in the new Farm Bill.

I would be glad to answer any questions.

Ms. BUERKLE. Thank you all very much.

I think I would like to start, and I'll yield myself 5 minutes for questions, because for many months now, really, it's been a recurring theme from the dairy industry, from agriculture, from the apple industry, we need a reliable legal work force.

So maybe we could spend a little bit of time today having you tell us, what would that program look like? What would a stable, reliable, legal work force, what would that process look like and how can we help to achieve that.

And we can start with each one of you. I'd like to hear your comments.

Ms. MARTIN. I think agriculture is very different from most other industries. We have, as Mr. Teeple mentioned, we have a short period of time that we need workers. The feeling in the United States is that those workers are there because there is unemployment. But you're not going to get somebody to give up their unemployment—what they may make from unemployment to come to work on your farm for a short period of time and the work is very, very hard. It's been documented. I had workers last year, domestic workers, who came to us—and by domestic we mean from the United States, not necessarily like a domestic worker in a home—who came to us and they lasted 4 hours. They couldn't do the work.

That's not necessarily going to be true, but because that is generally what happens, we need a program that allows me to bring workers in. The H-2A Program is the only legal program that I have available to me at this point. The Federal Government has—it's not a well-run program. You can do one thing 1 year and then the next year you do the same thing when you put in your applications and they'll turn it down. That's what's called a Deficiency Letter—and for no reason.

We just had a conference call with Congresswoman Slaughter's office and the U.S. Department of Labor and we tried to nail them down. Like, you know, we got a Deficiency Letter because we did not put—we didn't say why we needed more workers sent in the year before, for example. And they just automatically threw it out. When we pointed that out to them, why did that happen? They said, well, you didn't tell us why. Well, where on the form does it ask us to tell us why? We just answered the questions on the form. And their answer was, well, there's no place on the form. You have to write a letter to us. Well, that kind of thing—and you're also given 3 days to get this done. So when you receive a Deficiency Letter, you have 3 days to correct it and get it back to them. It's an impossibility.

Ms. BUERKLE. Could I interrupt for a minute?

Currently when you file an application and it has to be done every year for the temporary employees, and when you do that, is there a timeframe at which the Department of Labor must respond to you? Is there an expectation that within 10 days or 30 days, you're going to hear back with a determination?

Ms. MARTIN. There is a timeframe and there is an expectation. We are held to the timeframe. We are hopeful in our expectations of what's going to happen. The U.S. Department of Labor does not respond consistently or fairly. That's the biggest part of the problem. We don't know.

And in agriculture when you have a product or something that needs to be planted or harvested or cared for and you count on your employees to be there, and they hold you up for 6 weeks, everything on your farm has been planted, everything has been ready to go, and they don't—for no good reason that we can figure it out, don't send you the workers and hold you up, you've got 6 weeks of something that you have probably just lost your entire—well, there will be no profit that year. And there's no good reason and no explanation on their part.

Ms. BUERKLE. Thank you.

Mr. Taylor.

Mr. TAYLOR. Yeah. Dairy farms, at the minimum, need inclusion into H-2A Program. There have been bills in the past to try to do that. We do not qualify for H-2A as dairy farms. We need year-round labor. Even in times of high unemployment, in the last 4 years we've had three domestic workers come to the farm and ask for jobs. Two high school young ladies are helping on the farm, have taken those jobs and are happy to have them. The other person was not even remotely qualified. And that's kind of a misnomer with agriculture. A lot of times people feel these jobs are unskilled and anybody can do them and it's not true at all. There's a tremendous amount of technology involved. We need a skilled labor force, and regardless of pay, which is another misnomer, a domestic laborer does not want to take jobs on farms unfortunately. So the challenge for us is to find a labor force and many times they turn to migrants for that.

One of the other challenges—you asked about is what would it look like. We need a Visa Program, whatever you want to call it, a Visa Program, maybe a 3-year Visa that would have to be renewed for terms of 3 years. We need to bring these people out of the shadows. Unfortunately the need for people to work here has been rolled into the whole immigration discussion, and it almost seems like it will never be solved because there's so many factors with it. In agriculture we need a Visa Program. We can't send them all back at once. We—simply farms would have to shutdown because they could not continue without a labor force. If you bring them in, make them pay a fine, get a Visa, the ones who do not come in, those are the ones you need to chase. If there is an issue, the ones that don't come in are probably the ones you should go after.

So I would implore you to work for a Visa Program, at the very least, we need to improve H-2A. Ms. Martin and Mr. Teeple have talked about that quite a bit. We need a stable, reliable work force, and Visa Program, if we could get one in place and try to separate it from the emigration discussion as a full package would help us tremendously.

Ms. BUERKLE. Mr. Teeple.

Mr. TEEPLE. I would agree with Mr. Taylor. A Visa Program to address the issue of the people that are here. You know, there's an estimated 8 to 12 million undocumented workers here in the United States. I think we estimate approximately 2 million work in agriculture. These people want to be legal. They want to be able to come and work, and they want to be able to go home. The current system has trapped them here. Right now they don't dare go

home because they can't get back across the border. We agree, and I think in agriculture we agree that we want secure borders. We need to make a provision for these people legally to be here.

We had these 8 to 12 million undocumented workers working here in the United States while we had almost full employment in this country. It's a different labor force than the labor force that's currently unemployed, especially for fruits and vegetables where we need this migratory labor force.

The H-2A Program works sort of, but these people can't move around the country. If you have an H-2A person come to your farm, they can only work for your farm for that specific purpose. They can't go to your neighbor if he needs work. A lot of our help migrate around the country. Most of our people are picking blueberries before they come and pick apples. That won't work under the H-2A Program. We need the H-2A Program changed and we need a Visa Program.

Ms. BUERKLE. So you're talking having two separate programs when you say improve the H-2A or have the Visa or both?

Mr. TEEPLE. Both. You need to address this population that's here.

Ms. BUERKLE. And the dairy industry has been excluded from the H-2A Program because it's year round?

Mr. TAYLOR. Yes. Exactly. Under H-2A, I believe the maximum is 8 to 10 months that you are able to continuously stay here. I may be wrong on that, but—it's 10 months. OK.

And the dairy industry, we need laborers year round and continuous and it's very—well, it's not allowed, but it would be very difficult if it was allowed under the eight to 10-month guideline. It would have to be allowed for year round work.

Ms. BUERKLE. Thank you.

I yield to Mr. Kelly.

Mr. KELLY. Thank you, Madam Chairwoman.

A question for all of you. This is not all that involved. I don't know if you were here for the previous group. I'm an automobile dealer by trade.

But my experience has been the people that come in to talk to me never had any experience in what it is that I do. And they've never actually done the job nor been involved with anything of that job. They may be very good with laptops, but when it comes to actually doing the job and understanding what it is, the challenges that you all go through, if you could, just help us. The people that you talk to, any of them have any experience? Anybody ever sit down with you—and we have something in the automobile industry called 20 groups where you get 20 people of like size in different areas of the country, sit down and discuss common problems and come up with solutions that make sense.

I would suggest that's really where we seem to be dropping the ball here. I don't know anybody that I have ever talked to that's done an audit at my place that had any idea what it is that I do.

So if you could—and you all are in agriculture, different parts of it.

Ms. MARTIN. I think you're absolutely right. Most of the general public knows about farming from what they hear, and what they hear is advocate, labor advocates who have the funding to be out

there and to stage things, stage presentations on how bad farmers are.

I think most people, my friends, most of my friends are teachers. They're not in agriculture and they look at me kind of, really, like if I have a thought that's important, it's like, wow. You know, so you kind of have to overcome that a bit.

But the other thing is, no, I think most people think we pay minimum wage or we try to pay less than minimum wage. That's not true. The Adverse Effect Wage Rate which is the required wage for an H-2A worker is \$10.65. I pick my workers up at their house in Mexico; I get their Visas; I pay all their expenses up to my house; I pay for their food even while they travel; I provide free housing; take them to the store; take them to the doctors; whatever they need, and that's in addition—and then I send them home. And lately we've been flying them home because of the border problems in Mexico. That's in addition to the \$10.65 an hour that they earn here.

That may not seem like had a great deal in industry, but when you add in all the other things, it's really not a—it's not an inexpensive way for us to run our business and it's not a cheap wage for the workers.

So, no, I don't think people do know what we do. And we're really too busy to do what we do to get ourselves out there to share that. We also lobby in Washington DC and in Albany.

Mr. TAYLOR. This is a very interesting question for us because it really hits home. And Congresswoman Buerkle's district especially now, we're dealing—especially on environmental issues. The non-farm community at large doesn't understand what we do and why we need to do it and the amount of regulation that we're under.

We have individuals in communities here who have tried to make people believe that we're bad and that alls we want to do is pollute the environment, which nothing else could be further from the truth. Particularly in Wayne County now we have been dealing with a group of three or four people that have spent a lot of time, have a lot of time, sending us this message against agriculture.

A number of us in the "Ag" community have stepped up and tried to hold community meetings to educate them. We've brought in people from Cornell. This Saturday we just had a tour on a 1,000 cow dairy to talk about methane digesters and other things. And to really try to educate the non-farm public about what farms are doing to protect the environment, which is a tremendous amount. And yet, we still have people with ideas that we aren't doing anything.

One thing that I did talk about at the Chesapeake Bay, one interesting fact about that: New York is far and above a lot of other States in the country in its environmental protection and we're thankful for that and farmers have worked to embrace that. We have medium sized CAFOs as well as large CAFOs based on size.

The U.S. geographical survey just inside Pennsylvania shows that the water leaving New York is clean. And if it were the same water that reached the bay, the bay would not be impaired and we would not be facing this Chesapeake Bay clean up.

So we've always tried to point out to people we're doing everything we can, but sometimes it's a very difficult message for us to get through and get people to understand. If we are going to grow food in this country—and we have a tremendous ability to grow food in this country. Globally in less than 40 years we have to increase our food production globally by 40 percent. That's the way we need to look at our food production, is globally. There will be over 9 billion on the planet and how are we going to do it? This country is positioned to do that. We are environmentally sound; we have good management practices; we produce a high-quality product and it's safely done. Other countries like China, Mexico and Brazil, if we don't do it, they're going to do it for us. And they will feed the world and I don't think we want that.

So we certainly do have a number of challenges getting people to understand what we're doing and why we're doing it and the need for us to be able to do it. You can't move my farm to China, but China will do the job for us. So I think it would be better suited for us to realize that we can protect the environment and produce a high-quality product.

Mr. TEEPLE. Ninety-eight percent of the farms in America are family owned farms. We have our children, our relatives. We're working on our farms. We're concerned about our farms; concerned about the land. We're good stewards of the land. We seem to be labeled as corporate farms; most of us are corporations for business reasons. That doesn't mean that we're still not family farms. We, you know, I think as I pointed out in my testimony, I think we're going to be reaching a point with high-labor farming in the fruits and vegetables that either we import this labor to harvest these crops or we will be importing our food. We can go the same way that the garment industry did in this country.

In the northeast we used to have a lot of garment factories. They didn't just all disappear overnight. Slowly they started moving. The same thing is happening right now with fruits and vegetables. The California area, it's very easy to cross the border and have that produced in Mexico and it's happening now. I don't think in this country that we want to give up our production of food and especially on fruits and vegetables.

Mr. KELLY. But do you have a chance—I mean the people that come to see you, do you have a chance to review with them or do they have any idea when they come there what it is that you do?

My whole concern is most of the people I talked to in these agencies and bureaucracies never have done the job that they're trying to regulate and that's scary to me.

Mr. TEEPLE. It is scary.

Mr. KELLY. And most of them have no clue. Thank you.

Ms. BUERKLE. If I might, I just have a couple more questions I want to flesh through a little bit more this labor issue because it seems to be something that I've heard about and is a big issue.

In New York State we have lost so much industry, and we are fortunate to have agriculture and dairy farming. The industries—that's one of the leading industries in this State. So we need to work hard to ensure your success. And as we talked about in the previous panel, to get the government out of the way so you can do what you know how to do and what you do best.

Regarding the labor issue, what are you hearing is the impediments? Why can't this be streamlined? The Department of Labor—or who you have talked to? What is the impediment? Why won't they talk about reforming the process so you can get people here reliably, get them back home when the season is over with, and get what you need rather than the situation as it is? What are the obstacles? What are you hearing.

Mr. TEEPLE. It's a huge problem. We're talking comprehensive immigration, and it becomes larger. It's like the comprehensive health care plan, and we've seen all the concerns around that.

Immigration is probably larger than the health care plan as far as it's issues. Because of that, it's difficult to tackle. And with high unemployment, it's politically poisoned talking about bringing in foreign workers. You know, maybe we need to divide it up in pieces and work at it in smaller pieces.

Ms. BUERKLE. I heard testimony, though, that the folks you bring in to work don't want to stay here. They want to go back home and then come back when it's time to work again. Is that your experience?

Mr. TEEPLE. There's some of both, but a lot of the younger fellas come and work and would like to go home. Usually in the apple industry, speaking for apples, these folks have worked in other areas of the country, working with sweet corn in some places, watermelon, peppers and blueberries and apples are about the end of the crop. We finish the first, second week in November. A lot of them would like to go home for Christmas. A lot of them don't dare.

Ms. MARTIN. I think your question of what needs to be done to be fixed, that's the big question. We don't know. We don't know why the impediments are there. It gets worse and worse every year.

Our feeling as farmers is that they want to do away with the H-2A Program, and also our feeling as farmers is that is only legal option, we have to get go legal workers here. We're trying to work within the system. Immigration, if you took immigration aside and didn't even deal with immigration, we're just asking for a legal work force anyway we can do it.

The impediments that the Federal Government is putting out there, to us, make no sense. There's no reason. And we actually ask—I personally ask the Department of Labor, the U.S. Department of Labor, give me the name of someone I can contact when I have a question—I had trouble between the State Department of Labor and the Federal Department of Labor—just give me a name so I don't have to just keep trying to work my way up to an answer.

And their answer to me was, "Well, on our Web site we have a box that says "help" and you click the box and then you'll get help. Well, it doesn't work. In an ideal world it would work, but there's no one there who really is answering and there's no one who wants to say, "My name is so and so and I'm going to give you this answer." I think that may be the way the agencies work. But we have no answers and that's what we would like to get to the bottom of. Just give us a program that works—make the program work.

Ms. BUERKLE. Have your organizations, have you put together some piece of legislation or some kind of dream piece of legislation,

have you begun to put together what a good H-2A Program would look like and could we, you know, get that from you so we can begin to look at this process that would work? I think you're right, maybe the issue to break it down and not look at immigration like this, but look at a legal, safe work program as a small piece.

Mr. TEEPLE. The jobs bill that has been introduced a number of times in the past addresses the H-2A Program and the Visa Program. It's a good piece of legislation but it just hasn't garnered enough support to work through Congress.

Mr. TAYLOR. I know the New York Farm Bureau has made several attempt to make changes to H-2A and to push for "Ag" jobs and other things and, unfortunately, we have not been able get things to move through.

And, yes, some of the things that we've seen that have been impediments to this, one example of something in H-2A that's really absurd. Workers are required to apply online in their own country. Most countries that these workers are coming from to find a computer and then to understand how to use one, it isn't even practical. So farms are actually paying people to go down there, to get—find workers, help them apply online for the H-2A Program to get them here. And it's things like that.

We have a fruit and vegetable grower in Ontario County, that the way to—you have to start earlier and earlier in this process each year—he's one of the largest cabbage growers in the State—and 2 years ago his workers were supposed to arrive on May 15th. June 15th he still didn't have workers. By the time it was full cabbage planting time, he had help from his neighbors and friends and other farms. Literally he had over 90 people on the payroll in 1 week just to plant cabbage. He had no workers under H-2A until July 15th. There's horror story after horror story like that.

If this is the program we are going to use, we need to have it standardized and make some changes to it. And the other issue is the rules have changed several times in the last 5 years. We had what we call the Bush Rules, then President Obama came in, then we had the Obama Rules, and there were lawsuits. That was upheld. We're going to stay with the Bush Rules for a while. Now we're back to the Obama Rules. So the constant flux and no improvements to the program is not helping call.

Ms. BUERKLE. Thank you.

Mr. Kelly.

Mr. KELLY. I had one last question and I think, Ms. Martin, you talked about it.

Because there's a feeling out there that when we say what the minimum wage is, people write in there mind, look at what the established Federal wages, in your case maybe it's New York State. It actually has nothing to do with the effect of minimum wage which is driven by the region you work in. It's the total wage that you pay, because I think you said, it was \$10 to \$15, plus transportation, plus lodging, plus, plus, plus. So your minimum wage, your effective minimum wage, is the total, cumulative value or amount, or the amount that you spend—and I think that—and one of the things we're finding out when we hold these hearings—and I don't mean this in anyway disrespectful—the American people, if you

were to ask them where milk comes from, it's from the grocery store. Because that's the way we've grown up.

But when it comes time to talk about what we have to pay people—and I think this is the thing that bothers me—because they're only minimum-wage jobs. Nobody has the idea of what a minimum wage actually means to an employer.

So if each of you could tell me, what's your effective minimum wage? It's not what's being posted as the minimum wage, because I can't hire anybody at that. In my area I've got to pay them much more than that.

So if you could just maybe talk just a tiny bit about that, because I think it's important for folks to understand what that dollar amount actually is.

Ms. MARTIN. Well, as I mentioned on the H-2A Program, it's called an Adverse Effect Wage Rate that is set by the government, and that right now is \$10.25 an hour. Our average workers—I would say, we have what's a cabbage line, we have processing. I think the minimum that—and they all receive free housing too. So I would say that normally on a farm you're probably paying for a part-time worker; you're probably paying \$12 and probably—and some of our supervisors—you're probably paying—and they get houses. I mean, these are not small little places. So if you figure that in, they're probably getting \$30 an hour.

I mean, some our supervisors who started out as a migrant labor are making about \$72,000 a year. And that is before you get to their housing, before you get to all the things that farms do. I don't think—I don't think that's—I don't think that's out of line with what other people pay, but because we aren't out there speaking for ourselves and—actually we've learned in agriculture that you have to fly a little bit below the radar. That's unfortunate.

I want to stand up and say, "Hey, look it. I'm proud to be a farmer and this is what we do and this is what we do in our community," but I can't say it. Even in church I have to listen, while we're taking up a collection for the "poor migrant farm workers." I'm like, I know what these "poor migrant farm workers" are making. Lets build a little bit of self esteem for them also. They're hard workers. They work harder than most Americans I have had on my farms. So I think they are well paid, and I think that they're extended family. I don't think they get the credit that they deserve, and I think we are blacklisted as employers who like to keep people down.

Mr. TAYLOR. On our operation the wage rate is from \$8 to \$16 an hour. That also does not include housing. So it's different for everybody, their skill level and time in agriculture. So there's a varying scale for us.

Also I'd like to, you know, one thing that doesn't get talked about a lot, people think that we set the wage rate as employers and nothing could be further from the truth. The employees set the wage rate. They know what they are—

Mr. KELLY. It's market driven.

Mr. TAYLOR [continuing]. It's market driven. They know what they're—we like to say, "They speak with their feet." If you don't pay them enough and they are good workers, they're going to go somewhere else and find another job.

Mr. TEEPLE. Excellent point. People aren't staying on our farms. We're not forcing them to stay. They can go any place they want to.

On our farm we pay by the piece rate, which most apple picking is done by the piece rate. People aren't picking apples for minimum wage; it's hard work. These people want to make some money and they're making—on our farm the minimum would be \$10 an hour, most of our people are making \$12 to \$15 an hour and receiving free housing and utilities, which I figure is worth about another \$3 per hour.

Mr. KELLY. I think this is the problem. Because we talk about the domestic work force that doesn't want to do these jobs because they're minimum-wage jobs. Just because it's posted as \$7.25 an hour, that's not what you pay. You pay what the market in your area demands that you pay.

And I think—I mean, we've got a huge problem in our country branding it for what it is and marketing it for what it is and having to reaching frequency out there. When I talk to people, they say I won't work for \$7.25 an hour. I say, you know what, not only you, but nobody else I've ever hired will work for that. So I'm on board with you.

But you know what? We have an uphill battle with this because minimum wage is certainly not the way it's being played out. Thank you so much. Appreciate it.

Ms. BUERKLE. Thank you all very much.

We want to thank you for the hard work all three of the industries that have been represented here today represent years and generations of hard work and commitment, and we want to thank you for that.

Thank you for what you bring to the upstate economy and to the State of New York, and we look forward to working with you to try to resolve some of these problems, and thank you so much for being here this morning.

Ms. BUERKLE. We will now welcome our third panel of witnesses for this morning's hearing.

This morning we have Ms. Maggie Brooks, who is the county executive of Monroe County; Jolene Bender, the town supervisor for Marion, New York; and last, but certainly not least, Sheriff Barry Virts, and he is the sheriff of Wayne County.

Welcome to all of you and thank you for being here. As is the rule of the Oversight Committee that we will swear you in. Would you please stand.

[Witnesses sworn.]

Ms. BUERKLE. Please let the record reflect that all witnesses answered in the affirmative. Thank you.

We are very pleased to have you here this morning to conclude our third panel of testimony regarding how the government, the Federal Government, with its whole host of regulations gets in the way of success. We've heard from industries about small business as well as the agriculture industry.

Now it's our pleasure to welcome all of you to speak about municipalities and what the Federal Government is doing to impede your success as well as affect the cost of doing business in your municipalities in Monroe County.

With that I will start with Ms. Bender.

STATEMENTS OF JOLENE BENDER, SUPERVISOR, TOWN OF MARION, NY; MAGGIE BROOKS, COUNTY EXECUTIVE, MONROE COUNTY, NY; AND BARRY VIRTS, SHERIFF, WAYNE COUNTY, NY

STATEMENT OF JOLENE BENDER

Ms. BENDER. Thank you. Greetings, Congresswoman Buerkle, members of the Committee on Oversight and Government Reform and guests.

My name is Jolene Bender, supervisor of the Town of Marion in Wayne County. I appreciate the opportunity to highlight some of the regulatory changes placed upon the town and local government by Washington.

I'd like to state that it is my belief that local government is a government closest to the people. The key to our success at the local level is the expansion of, and improvements to, water lines, wastewater treatment and highway infrastructure improvements. I appreciate your support which allows local municipalities to build upon their existing infrastructure. We cannot build on the opportunity or create jobs or enhance the movement of persons into our communities without improvements to our basic infrastructure.

Some of the issues that I have faced with regard to water district expansion and extension are:

One, often co-funding by more than one funding agency is necessary to make a project affordable; however, the funding agencies do not seem to work together to facilitate the co-funding.

Each agency has different requirements for application packages. Consequently, municipalities are forced to prepare and submit separate applications packages to each agency which unreasonably adds costs, and prolongs the application process.

Two, next, each agency interprets the National Environmental Policy Act [NEPA], requirements differently. Consequently each agency requires separate NEPA reviews which differ from other. Rather than confusion, these funding agencies should, if possible, accept one NEPA standard for all sources of Federal funding. Why can't you have one simple standard that all Federal agencies can share and adhere to.

Three, Federal funding agencies often require the commitment co-funded project. But when a town does not have that seed money to make a commitment before it is funded, that makes it difficult to obtain a funding commitment from other agencies. No one wants to be the first to make a commitment toward a project.

Funding agencies change their application requirements frequently, and if their request for information needed to be submitted, they often make those changes mid-stream and worse after a municipality has already submitted its application, or is in the process of trying to prepare one. Frequent changes that lead to extreme confusion and contribute to delay because the municipalities have to scramble to assemble all those additional documents and all that new information required to satisfy those revised requirements.

For instance, one recent change that was created a lot of extra work that delayed one application was the requirement that towns must now provide consumption figures and a head count of residential and non-residential units within the town's existing water or sewer districts before we could be considered for funding. I expect this helps to show justification for the money to be spent, but the requirement is just too difficult.

Five, Rural Development has also made a recent change in the procedures. It eliminated the agency's pre-eligibility determination PED and the funding package estimate which the agency would offer when the full application was submitted. This makes it difficult or even impossible, for towns to establish water districts when they require the New York State Comptroller's approval. The State Comptroller's Office will not take into consideration potential funding from Rural Development unless that agency provides an upfront written estimate of its funding package. As a result, the State comptroller will not approve the formation of those water or sewer districts. This situation hinders municipalities in their attempts to create water districts, and it also prevents them from garnering bonus points for project readiness which can improve the competitiveness of their project, and improves the chances of that project being funded sooner.

For me, personally, my Town of Marion has a wastewater treatment plant problem. The EPA and the DEC are moving toward stricter limits on discharge water quality which may force us to build a new treatment plant. All indications are that they will increase discharge requirements upon small rural communities, those with 500 users or less and with a discharge into existing streams of 125,000 gallons per day. This will result in drastic increases to our cost of compliance, which then has to be passed through to my community as increased user fees which they cannot afford. The Town of Marion is one such community where increased user fees would result from renovating, upgrading and replacing existing wastewater treating facilities to meet those higher discharge standards and requirements, however, those higher standards do not seem required or justified.

It would be more prudent to study the present impact on existing water qualities prior to discharge and after discharge to determine if water quality is actually being adversely affected by the discharge. If water quality is not being adversely affected, then the burden placed upon small communities to meet unnecessary stricter limits appears unreasonable, especially during these more difficult economic times. While it is important to strive for and achieve high water quality, it's also important to consider that the stricter limits, once imposed, merely result in hardship to my local community, without a substantial impact upon the water quality discharged to a local waterway, then why should we do it?

In closing, anything you can do to address the above type of issues and concerns and which would assist Marion to increase its efficiency and effectiveness, will be greatly appreciated. Thank you.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Ms. Bender follows:]

Greetings Congresswoman Buerkle, Members of the Committee on Oversight and Government Reform and guests.

Thank you for this opportunity to appear before you today.

My name is Jolene Bender, Supervisor of the Town of Marion in Wayne County. I appreciate the opportunity to highlight some of the regulatory challenges placed upon town and local government by Washington.

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Some of the issues that I have faced with regards to water district expansion and extension are:

1. Often co-funding by more than one funding agency is necessary to make the project affordable; however, the funding agencies do not seem to work together to facilitate co-funding.

Each agency has different requirements for their application packages. Consequently, municipalities are forced to prepare and submit separate applications packages to each agency which unreasonably adds costs, and prolongs the application process.

2. Next, each agency interprets the National Environmental Policy Act (NEPA) program requirements differently. Consequently, each agency requires separate NEPA reviews which differ from the other. Rather than confusion, these funding agencies should, if possible, accept one NEPA standard for all sources of Federal Funding. Why can't you have one simple standard that all the federal agencies, can share and adhere to?
3. Federal funding agencies often require the commitment of other funding agencies for a co-funded project. But when a town does not have that "seed" money to make a commitment before it is funded that makes it difficult to obtain a funding commitment from other agencies. No one wants to be the first to make a commitment towards a project.

Funding agencies change their application requirements frequently, and their request for information needed to be submitted, they often make those changes mid-stream and worse after a municipality has already submitted its application, or is in the process of trying to prepare one. Frequent changes lead to extreme confusion, and contribute to delay because the municipalities have to scramble to assemble all those additional documents and all that new information required to satisfy those revised requirements. For instance, one recent change that created a lot of extra work and that delayed one application was the requirement that towns must now provide consumption figures and a head count of residential and non-residential units within the town's existing water or sewer districts, before we could be considered for funding. I expect this helps to show justification for the money to be spent, but the requirement is just too difficult.

5. Rural Development has also made a recent change in procedures; it eliminated the agency's pre-eligibility determination (PED) and the funding package estimate which the agency would offer when the full application was submitted. This makes it difficult or even impossible, for towns to establish water districts when they require the New York State Comptroller's approval. The State Comptroller's Office will not take into consideration potential funding from Rural Development unless that agency provides an upfront written estimate of its funding package. As a result, the State Comptroller will not approve the formation of those water, or sewer, districts. This situation hinders municipalities in their attempts to create water districts, and it also prevents them from garnering bonus points for project readiness which can improve the competitiveness of their project, and improves the chances of that project being funded sooner.

For me, personally, my Town of Marion has a wastewater treatment plant problem. The EPA and the DEC are moving towards stricter limits on discharge water quality which may force us to build a new treatment plant. All indications are that they will increase discharge requirements upon small rural communities, those with 500 users or less and with a discharge into existing streams of 125,000 gallons per day. This will result in drastic increases to our cost of compliance, which then has to be passed through to my community as increased user fees (which they cannot afford). The Town of Marion is one such community where increased user fees would result from renovating, upgrading and replacing existing wastewater treating facilities to meet those higher discharge standards and requirements, however those higher standards do not seem required or justified.

Would it not be more prudent to study the present impact on existing water qualities prior to discharge, ~~versus~~ ^{and} after discharge,

to determine if water quality is actually being adversely affected by the discharge? If water quality is not being adversely affected as operated, then the burden placed upon small communities to meet unnecessary stricter limits appears unreasonable, especially during these more difficult economic times.

While it is important to strive for, and achieve, high water quality, it is also important to consider that if the stricter limits, once imposed, merely result in hardship to my local community, without a substantial impact upon the water quality discharged to a local waterway, then why do it?

In closing, anything that you can do to address the above type of issues and concerns above and which would assist Marion increase its efficiency and effectiveness, will be greatly appreciated.
Thank you

Sincerely

Jolene Bender,
Supervisor, Town of Marion
Wayne County
New York

Ms. BUERKLE. County Executive Brooks.

STATEMENT OF MAGGIE BROOKS

Ms. BROOKS. Well, thank you very much for the opportunity, and certainly there's no issue of greater importance to all of us in government than to strengthen the local economy and to be able to create jobs. It's certainly our priority.

Although government doesn't create jobs, we are certainly at the table working tirelessly to foster the environment that increases economic development opportunity and certainly allows business to grow and expand and to create jobs in the private sector.

There are a number of things that we do locally by maintaining a stable tax rate, providing affordable financing and incentives, through our Industrial Development Agency. Monroe County is certainly at the table each and every day to assist businesses to improve and expand their operations locally.

Despite this activity at the local, there are a number of Federal regulations that when coupled with the cost of unfunded mandates—and you hear us talk about that all the time—has led to enormously high property taxes that have threatened our economic prosperity by driving businesses, jobs and young talents away from our State in search of greater opportunities elsewhere.

Certain Federal regulations have grown increasingly detrimental to the small to mid-sized companies that have become this region's economic bread and butter. For example, the Federal Funding Accountability and Transparency Act of 2006 and 2008 hinders small businesses looking to become subcontractors on large Federal contracts, because it's not cost effective for them. Federal reporting requirements are the same for a prime contractor who has a multi-million dollar contract as it is for a small contractor who's doing \$25,000 worth of the work. These reporting requirements for small business include salaries and bonuses of officers, pension values, specifics on compensation in excess of \$10,000. This rule highly discourages small business from bidding and securing subcontracts on Federal projects as the cost of monitoring and reporting outweighs the profit.

Another impediment to local economic development in Monroe County is a requirement under the U.S. Small Business Administration 504 Program. The 504 Program is widely used in this community. It requires that one job be created for every \$65,000 in Federal funds borrowed. The amount should be increased to one job for every \$100,000 borrowed to allow businesses to focus on investing in the new technology required to remain competitive in a global economy.

Often times in government too much emphasis is placed on a company's head count. What often gets neglected is a company's investment in the economy. Investing in capital equipment is often a great indicator of positive economic growth.

Federal regulations can also indirectly impact local economic development efforts by forcing counties to pick up the cost of unfunded mandates leaving little left over for economic development initiatives that put people to work and strengthen the economy.

One example is New York State changing their interpretation of a current Federal transpiration regulation. The State's new inter-

pretation requires transportation departments to obtain temporary easements for right-of-way acquisitions instead of grading release.

In the past, these projects only required a grading release, which is, in essence, an unofficial handshake for a use of a property and only required a grading release that was inexpensive, yet effective. The new requirements adds thousands of dollars in cost to project totals and prohibits construction from moving forward in an efficient manner.

It's critical that New York State use the original requirements for right-of-way acquisition so costs are not eventually shifted on to the taxpayer or back to the State and Federal Governments who often pay a portion of a county's transportation project costs.

Another Federal transportation regulation that is impacting counties is the requirement to replace all street signs with new higher visibility road signs. Monroe County has estimated that this new mandate will cost \$3 million in this community alone.

A new Federal environmental services regulation will soon change the way counties are required to clean up storm water runoff with no long-term funding source to do so. This new regulation has the potential to add significant cost to the planning, design and construction of new economic development projects.

When we get into the question-and-answer phase, I do have three people here with me: Mike Garland from our Environment Services Department; Judy Styler, Economic Development Director; and Terry Rice, our Transportation Director, because they are the detailed people.

In closing, I will just mention one other thing that we discovered in a very real way during the distribution of the stimulus moneys.

A lot of counties like ours were unable to apply those dollars because the requirements needed to take a property from idea to shovel-ready status made it impossible for us to ever have a project ready to receive stimulus fund designed to create jobs. So certainly when you talk about environmental regulations and some of the permitting processes that local governments have to go through to make sites shovel-ready, it's an impediment to us being able to help business on the local level.

And Medicaid is my final word. I don't have to say anything about Medicaid today. You know that is the cost dragger of property taxes mainly in New York State. So that's a whole different testimony.

But thank you for the opportunity today.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Ms. Brooks follows.]



Office of the County Executive
Monroe County, New York

Maggie Brooks
County Executive



**TESTIMONY TO REGULATORY AFFAIRS, STIMULUS OVERSIGHT, AND GOVERNMENT
SPENDING SUBCOMMITTEE**
Monroe County Executive Maggie Brooks
April 20th, 2011

Thank you to the members of the committee for the opportunity to speak with you today. As Monroe County Executive, there is no issue of greater importance to me than the strength and vitality of our local economy. Although government doesn't create jobs, at the local level, we work tirelessly to foster an environment that increases economic development opportunities for local businesses and facilitates business growth and job creation.

By maintaining a stable property tax rate and providing affordable financing and incentives through our Industrial Development Agency, Monroe County is at the table each and every day to assist businesses in improving and expanding their operations locally.

Despite this, there are a number of federal regulations that when coupled with the cost of unfunded mandates has led to enormously high property taxes that have threatened our economic prosperity by driving businesses, jobs, and young talent away from New York in search of greater opportunities elsewhere.

Certain federal regulations have grown increasingly detrimental to the small to mid-sized companies that have become our region's economic bread and butter.

For example, the Federal Funding Accountability and Transparency Act of 2006 and 2008 hinders small businesses looking to become subcontractors on large federal contracts because it is not cost-effective. Federal reporting requirements are the same for a prime contractor who has a multi-million dollar contract as it is for the small contractor who is doing \$25,000 of the work.

These reporting requirements for small businesses include salaries and bonuses of officers, pension values, and specifics on compensation in excess of \$10-thousand dollars. This rule highly discourages small businesses from bidding and securing subcontracts on federal projects as the cost of monitoring and reporting outweighs the profit.

Another impediment to local economic development in Monroe County is a requirement under the U.S. Small Business Administration 504 program. The 504 program is widely used in our community.

The 504 program requires that one job be created for every \$65-thousand in federal funds borrowed. The amount should be increased to one job for every \$100-thousand dollars borrowed to allow businesses to focus on investing in the new technology required to remain competitive in today's global economy.

Often times in government, too much emphasis is placed on a company's head count. What often gets neglected is a company's investment in our local economy. Investing in capital equipment is often a strong indicator of positive economic growth.

Federal regulations can also indirectly impact local economic development efforts by forcing counties to pick up the costs of unfunded mandates, leaving little left over for economic development initiatives that put people to work and strengthen the economy.

One example is New York State changing their interpretation of a current federal transportation regulation. The State's new interpretation now requires transportation departments to obtain temporary easements for right-of-way acquisitions instead of a grading release.

In the past, these projects only required a grading release that was inexpensive, yet effective. This new requirement adds thousands of dollars in cost to project totals and prohibits construction from moving forward in an efficient manner.

It is critical that New York State utilize the original requirements for right-of-way acquisition so costs are not eventually shifted on to the taxpayer or back to the state and federal governments who often pay a portion of a county's transportation project costs.

Another federal transportation regulation that is impacting counties is the requirement to replace all street signs with new higher visibility road signs. Monroe County has estimated that this new mandate will cost \$3 million dollars.

A new federal environmental services regulation will soon change the way counties are required to clean up stormwater run-off with no long-term funding source to do so. This new regulation has the potential to add significant costs to the planning, design, and construction of new economic development projects.

Substantial economic development in New York State communities will remain elusive until we can ultimately provide meaningful property tax relief for our taxpayers through mandate relief.

In New York, mandates are the main reason that property taxes are 79 percent above the national average. The New York State Association of Counties has identified nine mandates that consume 90 percent of the county property tax levy statewide. It should come as no surprise to anyone that Medicaid is at the top of the list.

Medicaid has grown to an unsustainable level that we simply cannot afford and remains our largest impediment to economic growth in Monroe County. We have a property tax crisis in New York State that will only be fixed if we change the way we pay for and deliver State services.

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Monroe County government has spent an astounding 315-million dollars on Medicaid since 2009. This figure does not include the costs borne by the state and federal governments. Annual Medicaid expenditures equal the equivalent of 45 percent of our entire real property tax levy.

I join with many of my colleagues across the State in support of the federal government reforming Medicaid laws to require states to assume fiscal responsibility for the program. Fiscal responsibility for services provided should reside with the level of government that has the decision-making authority over those services.

In the case of Medicaid, that is the State. A full State takeover of county Medicaid costs coupled with reforms to make Medicaid more affordable will ultimately provide relief to local property taxpayers giving local businesses more control over their bottom line.

Property tax relief, ushered in by mandate reform, will be critical to growing our local economy through business expansion, job creation, and new investments. Protecting our taxpayers is the key to retaining and attracting new businesses to our region so that our economy can continue to flourish.

Thank you in advance for your willingness to partner with local governments to usher in reforms in the interest of protecting the overburdened taxpayers of our great State.

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Ms. BUERKLE. Sheriff Virts.

STATEMENT OF BARRY VIRTS

Sheriff VIRTS. Representative Buerkle, Representative Kelly, thank you for the opportunity to testify before your subcommittee on Regulatory Affairs Stimulus Oversight and Government Spending.

My topic is the Prison Rape Elimination Act [PREA]. Several years ago Congress passed the Prison Rape Elimination Act [PREA]. I'm sure everyone is in favor of eliminating rape in prisons, but I'm not sure PREA will accomplish that. What I am sure it will do is add cost to the operation of county jails around the country. The act did not spell out how prison rape was going to be eliminated, but left it to the Attorney General of the United States to specify regulations that would accomplish it. The Attorney General proposed standards implementing PREA were published on the Federal Registry on February 3, 2011.

The PREA standards apply not only to Federal and State prisons which are designated to hold long-term prisoners, but also to the county jails that which are designed for short-term incarceration of persons awaiting trials and those serving a sentence of 1 year or less.

Most New York State sheriffs, like their counterparts in other parts of the country, are the chief law enforcement officers of their representative counties and the administrators of the county jail. Sheriffs take seriously their responsibility to operate the county jail safely and securely for public safety and for inmates in their care and custody.

We recognize the critical issues related to the sexual assaults of inmates while incarcerated and understand the need to take reasonable steps to prevent any such abuse. Sheriffs know that sexual misconduct have no place in a professionally and morally run correctional environment. We also know that rape, especially inmate-on-inmate rape, is much less of an occurrence in county jails than in prisons due in part to the short-term stay of the most county jail inmates, their local community connections, their opportunity for and ease of visitation for family and friends.

It is clear that many of the proposed PREA standards, although perhaps appropriately designed for prisons, will apply equally but inappropriately to county jails. Prison systems are generally much larger than county jails and they are intended for long-term stays. PREA does not really recognize the difference in the two types of correctional facilities, prison systems and county jails.

Imposing burdensome standards on county jail facilities would be impractical even in the best economic times.

The inmate population turnover and county jails is frequent. In 2010 Wayne County incarcerated 1,719 inmates with 55 percent, or 945 inmates, being released in the first 72 hours of incarceration. Under these conditions, many of the proposed standards could not be implemented effectively, yet many of the proposed standards would impose huge costs on our small county jails to address a problem that occurs primarily in the large prison systems around the Nation.

For example, PREA would impose stringent rules which many county jails lack sufficient physical facilities to comply with those rules. Counties would be faced the with the enormous and burdensome cost of building appropriate space, or the enormous and burdensome cost for litigation and sanctions for violating the standards.

The proposed standards which require each jail to collect and report detailed data and to hire an independent auditor to assess a jail's compliance with PREA. Most jails, certainly all of New York State county jails, already have detailed data collection and reporting obligations to their State oversight agency. In our case the New York State Commission of Corrections. Adding a Federal layer of audit will only add a financial burden and will create conflicting obligations between State and Federal mandates.

Again, all sheriffs recognize that inmates should be free from sexual assault while incarcerated. Washington should not presume that sheriffs will not do the right thing unless mandated in minute detail by a Washington rule.

Congress should not leave it to a Federal agency to determine how a sheriff can best accomplish his or her obligation to operate a safe, secure and humane county jail facility. The safety, security and good working order of a county jail is best determined on a State and county level with a sheriff administering his or her county jail, not Washington's one-size-fit-all regulations.

[The prepared statement of Sheriff Virts follows:]

Testimony April 20, 2011 Sheriff Barry C. Virts

The safety, security and good working order of a county jail is best determined on a State and County level with the Sheriff administering his or her county jail facility, not Washington's one size fits all regulations.

Several years ago, Congress passed the "Prison Rape Elimination Act" (PREA). I am sure everyone is in favor of eliminating rape in prisons, but I am not sure that PREA will accomplish that. What I am sure it will do is add huge costs to the operation of county jails around the country. The Act did not spell out how prison rape was going to be eliminated, but left it to the Attorney General of the United States to specify regulations that would accomplish it. The Attorney General's proposed standards implementing PREA were published in the Federal Register on February 3, 2011.

The PREA standards apply not only to Federal and State prisons, which are designed to hold long term prisoners, but also to the county jails, which are designed for short term incarceration of persons awaiting trial and those serving sentences of a year or less. Most New York Sheriffs, like their counterparts in other parts of the country, are the chief law enforcement officers of their respective counties AND the administrators of the county jail. Sheriffs take seriously their responsibility to operate the county jail safely and securely for public safety AND for inmates in their care and custody. We recognize the critical issues related to sexual assaults on inmates while incarcerated and understand the need to take reasonable steps to prevent ANY such abuse. Sheriffs know that sexual misconduct has no place in a professionally and morally run correctional environment. We also know that rape, especially inmate on inmate rape, is much less of an occurrence in county jails than in prisons, due in part to the short term stay of most county jail inmates; their local community connections; their opportunity for, and ease of, visitation by family and friends.

It is clear that many of the proposed PREA standards, although, perhaps, appropriately designed for prisons, will apply equally, but inappropriately, to county jails. Prison systems are generally much larger than county jails and they are intended for long-term stays. PREA does not really recognize the difference in the two types of correctional facilities; prison systems and county jails. Imposing burdensome standards on county jails facilities would be impractical even in the best of economic times. The inmate population turnover in a county jail is frequent. In 2010, Wayne County incarcerated 1,719 inmates with 55% or 945 inmates being released in the first 72 hours of their incarceration. Under these conditions, many of the proposed standards could not be implemented effectively. Yet many of the proposed standards would impose huge costs on our small county jails, to address a problem that occurs primarily in the large prison systems around the nation.

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Congress should not leave it to a federal agency to determine how a Sheriff can best accomplish his or her obligation to operate a safe, secure and humane county jail facility.

Ms. BUERKLE. Thank you, Sheriff Virt, and thank you to all three panelists.

I will begin by yielding myself 5 minutes, and I have questions for each one of the panelists.

Ms. Bender, I'd like to start with you. You mentioned the EPA imposing stricter standards on water quality. How did that come to be and what is the stricter standard and how will that impact you?

Ms. BENDER. I'm not really sure how it came to be, but about a year and a half ago the Town of Marion asked engineers to do a study about our wastewater treatment plant. It's approximately 30 years old as is most wastewater treatment plant are in rural upstate New York. So we thought we were being proactive in asking for an engineering study to see what, in future, was going to have to be done.

They did the report. The result was we probably were going to have to invest \$5.4 million to make improvements to our wastewater treatment plant. The problem is we had approximately 500 users to that plant and the cost to those users is going to be astronomical. We can't afford it. We are a wastewater treatment plant, little plug, our operator was just named Operator of the Year, so he knows what he's doing.

And we feel that the water that we're discharging after it goes through this cycle is as clean as the water coming into the plant. So we don't understand why the DEC, via the EPA, are saying that we have to make improvements to our plant to that extent.

Ms. BUERKLE. And so that \$5.4 million, that increase in cost would be because your complying with this standard?

Ms. BENDER. Correct. We know probably some improvements need to be made. We don't believe they need to be made to that extent. And it is happening across the region that DEC and EPA are looking at these plants, probably justifiably so, but we would love to do it, we just can't afford it.

Ms. BUERKLE. The other issue I wanted to ask you about was the co-funding issue.

Can you—that was sort of a generic, the co-funding problem. Is that a specific issue with you? Is that one instance where this happened or what were the agencies involved and what were the problems.

Ms. BENDER. First I'd like to say, the agencies we worked with, the people are wonderful.

A few years ago—well, about 10 years ago Marion seriously started looking into extension of water districts and expansions, simply because probably only at that point only a quarter of our town was covered by municipal water, and people were, rightfully so, demanding water. So we started looking into it and got one or two projects done through rural development. And then maybe 5 or 6 years ago co-funding was like the thing you were supposed to do. So we would look at co-funding with rural development and small cities. And they both expect different information out of us via this dual applications. And, of course, that would take twice the time and cost the town twice the money to have the engineers and administrators do all that work.

So we found it very difficult. We were fortunate enough to get one program funding, but one of the main reasons that was probably funded is it was a joint municipal project with another town, and between the co-funding and joint municipal work, that was very favorable. It was a lot of work.

From the time we look at these projects and the time we begin getting them into the ground is at least 2 years. People, you know, on a weekly basis, are calling my office. They want municipal water; we want to get it to them, but it's a difficult process.

Ms. BUERKLE. Thank you.

County Executive Brooks. There's so many things I could ask you about from your testimony this morning.

I think you mentioned about expanding and the importance of the 504 Program where you talk about, it should be raised from \$60,000 to \$100,000. Just so you know, the Federal stimulus bill only created one job for \$300,000.

I wanted to talk to you a little bit about this Federal regulation, the transportation regulation, with the street signs. Can you expand on that and what's expected of the county and what drove that change in legislation.

Ms. BROOKS. Yeah. And Terry Rice could certainly add what drove it. I don't have the answer to that, but he can add that to the testimony.

There is a requirement that communities change all of their street signs, their existing street signs, from lower case to capital letters. And there's a deadline in which we have to comply with that. And for this community it's about a \$3.6 million cost and we're just one county, you know, across this great Nation.

What we propose, as an alternative, is that local communities manage the condition of their street signs. And as we go out and make changes to those street signs, as we have to do, we can certainly comply with the Federal requirement. But to just say, let's go out and replace signs, some of which are very new, just doesn't make sense to me. And it really is, I think, when we look at some of the poster-child examples of, you know, mandates that don't make sense, to me that's a glaring one because it's just a waste of money and \$3 million that we could put to good use elsewhere.

I know—and again, Terry could probably add to this—that there were some thought that, you know, people couldn't see the signs. You know, as the population ages and our eyesight—you know, all the reasons that really just don't make sense. It's kind of an excuse to go out there and replace all these signs when we don't need to. So we have struggled with how we're going to pay for it, quite honestly.

Ms. BUERKLE. So the county would fund the sign replacement?

Ms. BROOKS. We would have to pay for the replacement. And in Monroe County, we are the traffic department for the city of Rochester and all 19 towns and villages, so, you know, this is quite an endeavor.

Ms. BUERKLE. And, basically, it's just from lower caps to capital letters?

Ms. BROOKS [continuing]. Capital letters and more reflectivity requirements as well.

You know, I think within the mandate there's probably some valuable rationale, but to just say, you have to do it now—let us figure—you know, say this is what—here's the goal. Let the local communities figure out how we get there and how we manage the resources to pay for it.

Ms. BUERKLE. Thank you.

While we have the opportunity, I would be interested—I know Medicaid is such a significant issue for the counties and what it does to your property taxes. With regards to, and I digress just a little bit, the block. Does it help or does it not make a difference, if we talk about Medicaid being a block grant funding to the State, rather than the way it is now, in the proposed budget, does that help the county? Does it impact on you at all.

Ms. BROOKS. It depends, again, you know, we're so reliant on the State and one of our frustrations is, in New York State, the counties pay for 25 percent of the program. And I believe there are only two States left where the counties actually have a financial stake in the Medicaid program. But we are very reliant, 100 percent reliant, on the State making the decisions.

I'm a big believer that the cost of a program needs to reside with the level of government that has the decisionmaking authority over it. Obviously, we're working with the State to try and take over Medicaid.

It's, you know, we have property taxes 79 percent above the national average here. Medicaid is the cost driver. We did a study, my colleagues across the State, there are nine programs, Medicaid being the largest, that consumes—nine programs that consume 90 percent of the county property tax levy statewide.

So take everything we collect, 90 percent of that is paying for nine programs and Medicaid is the largest, because we don't know what that would look like. But to the extent that the counties have to bear such a big portion of that program, it's certainly of concern to us, and we are always involved in that conversation.

Here in Monroe County we've spent \$315 million on Medicaid since 2009. So it's a growing problem. I spent 15 months on the Federal Medicaid Commission. A lot of smart people around that table, myself excluded, but a lot of smart people working on how we can rein in a program that's lived well beyond it's means. And certainly the Federal aspect of it, you know, it's become a universal health care program, not in just New York State, but across this country. We have Medicaided everybody that doesn't have insurance or who is underinsured.

If you want to talk about taxpayer burden, that's probably, again, a whole different session, but clearly a concern here in New York State.

Ms. BUERKLE. Thank you very much.

Sheriff Virts, just briefly. I know I've gone over my 5 minutes—Mr. Kelly will yield.

Mr. KELLY. Yes, ma'am.

Ms. BUERKLE. This PREA, is there a date that the Attorney General's Office has for compliance?

Sheriff VIRTIS. Not that I have seen for the New York State Sheriff's Association. We've got a committee statewide. I know Sheriff

O'Flynn here in Monroe County also has a representative, as I do from my office. But we have not heard when it would be imposed.

A facility like Monroe County that houses somewhere between 1,200 and 1,400 inmates a day, could possibly have to put two, three or four employees on. I would be forced to put a full-time employee on to interview every inmate that came through. I already have 70 officers and 140 inmates today in the facility. I think it's burdensome. Because of the programs that we have built since 2000, also all the audits that we have done, I have a Federal team that comes in every January that's there for a week, five people for a week. I have the State Commission of Corrections that comes in 2 or 3 days twice a year. The Department of Health comes in and inspects. The Department of Education comes in because jails have to provide education to 16 to 20 year olds for 3 hours a day. So we basically have schools in our jails. Plus we are very open in our visitation of contact with family and friends.

I just think, again, prisons and jails are two completely different systems. They house two completely different type of people. Ninety-five percent of inmates in the Wayne County jail—probably be parallel across the State—are released back to the same people places and things, their towns and villages. Only 5 percent go to State prison. In our application that's only about 80 people out of 1,700 will go to State prison. So we're talking about a different level of inmate.

Ms. BUERKLE. Is there any provision in that regulation that would allow the county jails to opt out or is there any room, you know?

Sheriff VIRTIS. It's a one-size-fits-all package. And that's our whole complaint.

Obviously, if a sheriff or entity is running a jail that's not up to standard and they are sanctioned, then they should be under more scrutiny. But us sheriffs that do run good jails and don't use the walls just to keep the inmates in, but allows the community to come in to be part of our incarcerating system, to be part of alternatives to incarceration, we should not be punished by a one-size-fits-all from Albany.

And, again, I agree with the county executive here. If we are in charge of the jail, we should have more decisionmaking power and how we run our jails.

Ms. BUERKLE. Have you been able to estimate the cost of what compliance would mean for your jail?

Sheriff VIRTIS. For my jail alone I am going to say it will probably be somewhere between probably \$90,000 and \$150,000.

Ms. BUERKLE. Thank you.

With that I'll yield to the gentlemen from Pennsylvania.

Mr. KELLY. Thank you, Madam Chairwoman.

Ms. Bender and Ms. Brooks, I come from a community that has a similar problem with yours when it comes to the DEP and water runoff. A lot of the homes that were built in the early part of the century and beyond. But wastewater and storm water, and in a lot of cases, we're seeing where when these folks built those homes a lot of their downspouts were connected to storm sewers and wastewater was connected. So now when there's a heavy rain, there's a flooding situation that's caused. I know the DEP has placed my

town in a very difficult position, because we're talking about a major overhaul of our whole sewage system: Storm water, wastewater and the implications on that.

If you could, because I understand—and I also had the privilege of serving on our city council—when you have CEBG money that's been reduced dramatically because of the wars we're fighting and other things that are taking our fund, now we are working with less. But on top of that there's regulations put into effect that even further limit what you can do with those funds. I know it's very difficult for small towns.

If you could just as a matter of, you know, just enlightening us. The public doesn't understand the effects of this, especially when you start getting your sewage bills, how much they're going to go up, and then our inability to fix some problems that we have either on our sidewalks, streets and towns because of the, first of all, the reduced limit of CEBG funding and then again the restrictions put in place that really limit what you can do with those funds.

So, just briefly, and I know you can't be brief on this. By the way, Ms. Brooks, I think you are being kind by thinking these people mean well. Thank you, though.

Ms. BENDER. Well, I can tell you several years ago we applied for a mitigation grant to alleviate the problem of storm drainage in our little hamlet. With that, we had to change the sewer lines; we had to do the storm water drains. And it probably took us almost 4 years to complete that project.

I went to a seminar before one of the projects began, and they said the first thing you need to do is buy a four-drawer cabinet, because by the time we get this project done, it's going to be full and that's the paperwork that we have to go through to complete a project. I mean, it's just unbelievable.

And the cost to our residents, if we have to borrow, or whatever, the \$5.4 million and spread that among 500 users, it can't be done. It just can't be done.

We have another project that we're going to do that kind of ties into that. Recently by New York State DOT we were awarded a millions dollars to remove and replace the sidewalks in our hamlet. It was a—I think it was a 70/30 grant: 70 percent from the State, 30 percent from the municipality. We feel that project is probably going to cost these same homeowners another \$100 on their tax bill every year.

Our sidewalks you cannot use: The elderly can't walk on them; you can't push a baby buggy on them. They're terrible. We want those sidewalks put in.

And then the EPA and the DEC came in and said, "Whoa, wait a minute. You've got to fix your wastewater treatment plant." So we're looking at this \$5.4 million. We want a nice place to live. We want to give our residents a nice place to live. I don't know how we do it with all the regulations and the funding we would love to get and have been successful, but we need more.

Ms. BROOKS. I want to make sure you have a great answer to your question. Would you mind if—Mike Garland is our Environmental Services Director and is an expert in this. I can talk about Medicaid all day long. He can talk about storm water and wastewater.

Mr. GARLAND. Thank you.

In Monroe County we have the Pure Waters Program to address wastewater on virtually a county-wide basis. In the city of Rochester we have a combined sewer system, and so when you talk about storm water and wastewater flowing in the same pipe, it creates challenges.

In Monroe County we had the foresight, beginning roughly 40 years ago, to consolidate relatively discrete wastewater treatment plants, but also to take advantage of Federal dollars available to mitigate overflows of combined sewers into the Genesee River and into Irondequoit Bay.

So we have a system in place in our city to deal with that. Our Pure Waters Program is a special taxing district, so we are able to raise revenues to address those issues. But as it relates to our suburban communities where we have elicit connections between storm water and sanitary sewer under the Phase Two Storm Water Regulations that County Executive Brooks technically referred to, that's an unfunded mandate where we are looking to improve the storm water quality of our community.

It's a program that came out of the Clean Water Act, the same act that promulgated regulations associated with wastewater, is now addressing storm water. While we understand the environmental merit and benefit of addressing storm water, it is, once again, an unfunded mandate for our community both in the public as well as private sector.

Mr. KELLY. And I think that's the part that the public doesn't often see. Because my understanding is that is the wastewater was started to really protect the quality of the ground water.

We've gotten from a situation that was a concern for public health to a concern of public spending. And I don't know how in the world we can continue to put mandates on people. The intentions, I'm sure, are good, but the ability to actually pay for it is not there. So if I can tell you that you have to do something, but I don't offer you anyway of doing it, then the burden then falls on the people that are paying the local taxes. That's sometimes overburdening. We don't see that down the road.

Ms. BROOKS. And just to emphasize that point, in Monroe County, 744,000 residents, we have a \$1 billion budget, 82 percent of our budget is mandated by the State and Federal Governments. So when we talk about mandates, imagine running your business and controlling 18 percent of what you do.

Mr. KELLY. The overall costs, I think, Sheriff, you did talk about when Ms. Buerkle asked you the cost of it.

That is the thing that we all are concerned with. Because most of these programs—I'm sure they have some merit at some level, but it does go down to the same way we run our homes and our businesses. You can only do what you can afford to do. The fact that somebody legislates it or regulates it doesn't make it doable.

So thank you so much for what you're doing, and I know it's frustrating, but just stick with us. We're going to try to get this fixed for you.

Ms. BUERKLE. Thank you all very much for taking the time out of your busy schedules to be here today. This was very enlight-

ening, and I'd like to thank all of you for being here and the committee will stand adjourned. Thank you very much.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings follows:]

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Statement of Congressman Elijah E. Cummings

Ranking Member, Committee on Oversight and Government Reform

Regulatory Impediments to Job Creation in the Northeast

April 20, 2011

Mr. Chairman:

The Chesapeake Bay is America's largest estuary and its biological productivity was once unparalleled in the world – making its current degradation all the more stunning.

As the Representative of Maryland's 7th Congressional District, I know first-hand what an incomparable resource the Chesapeake Bay is to the State of Maryland and indeed to this entire nation.

President Obama has made the restoration of this national treasure among his top environmental preservation goals.

Shortly after taking office, the President issued an Executive Order that created a Federal Leadership Committee on the Bay. The Committee has issued a variety of reports on the Bay's health.

These reports reaffirm that the Chesapeake Bay is one of the most studied water bodies in the world. They also reaffirm that there is no scientific doubt that the flow into the Bay of nitrogen, phosphorus, and sediment from a variety of sources is the cause of the Bay's decline. Together, these nutrients foster the rapid growth of algae and lower dissolved oxygen levels in the water; as oxygen levels fall, so-called "dead zones" develop where aquatic life cannot survive.

Controlling the flow of nitrogen, phosphorus, and sediments into the Bay is essential to restoring the Bay's ecosystem and enabling the Bay to thrive again.

Sadly, thirty years of voluntary agreements enforced only by good intentions have left the Chesapeake Bay with water quality that is still rated "very poor."

Particularly as the population in the Bay's watershed increases, it is evident that we must begin implementing more formal structures to control pollutant loadings; however, current law does not provide all of the authorities necessary to implement and assess the results of such new control measures.

Responding to these challenges, on October 20, 2009, I introduced the *Chesapeake Clean Water and Ecosystem Restoration Act of 2009*, H.R. 3852. This legislation was similar to legislation introduced in the Senate by Maryland Senator Ben Cardin.

H.R. 3852 would have required the Bay's watershed states and the District of Columbia to each contribute to the achievement of reductions in nutrient flows into the Bay until the levels established by Total Maximum Daily Load (TMDL) requirements were met.

I emphasize that to achieve overall nutrient flow reductions, H.R. 3852 would have required equitable reductions in pollution from all sources, including wastewater treatment plants, stormwater run-off, and run-off generated from agricultural activities.

H.R. 3852 also supported a renewed and reinvigorated partnership among Federal, state, and local governments, and between public and private interests. For our part, the bill would have authorized more than \$5 billion to support efforts to clean up the Bay, including providing \$1.5 billion to support initiatives that will control stormwater run-off and \$500 million for each of fiscal years 2010 through 2015 to support the Section 319 programs that help farmers implement nonpoint source management initiatives.

H.R. 3852 would also have established an innovative interstate nitrogen and phosphorus credit trading program.

While we were unable to enact that legislation during the last Congress, I continue to believe that this is the approach that needs to be taken to ensure the restoration of the Chesapeake Bay.

That said, states are still required to move forward with their implementation of the TMDLs that were issued for the Bay on December 29, 2010 consistent with consent decrees in Virginia and the District of Columbia dating from the late 1990s.

According to the Environmental Protection Agency, the TMDLs set Bay watershed limits of 185.9 million pounds of nitrogen, 12.5 million pounds of phosphorus and 6.45 billion pounds of sediment per year – limits that would achieve a 25 percent reduction in nitrogen, 24 percent reduction in phosphorus, and 20 percent reduction in sediment flowing into the Bay.

The TMDLs are tough – but they are realistic to achieve the reductions in pollution we need throughout the 64,000-square-mile watershed to restore the Bay's health.

And in no way do they threaten the viability of agricultural production – or the creation of jobs – in the Bay watershed.

Rather, implementation of the TMDLs will support the restoration of the thousands of jobs that have been lost due to the pollutant loadings in the Bay.

For example, the Virginia Institute of Marine Science has estimated that 40 percent of the jobs in Maryland and Virginia associated with crabbing were eliminated between 1998 and 2006 – an outcome resulting directly from the decimation of the crab population due to the continuing accumulation of pollution in the Bay.

We have seen that voluntary agreements and good intentions are simply inadequate to achieve our restoration objectives – and effective implementation of the TMDL process is the best chance we have of truly restoring the Bay's water quality.



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December 22, 2000

Thomas Battley, Executive Director
New York Photonics (PIANY)
150 Lucius Gordon Drive
Suite 117
W. Henrietta, NY 14586

RE: EAR and ITAR restrictions

Dear Tom:

I am writing this letter as president of a member of PIANY. I am concerned about the impediment that the Export Administration Regulations and the International Traffic in Arms Regulations present to a small business such as Optimax to conducting business outside the US borders.

Both sets of regulations, EAR and ITAR, are complex, difficult to master and fraught with potential liability if a company makes an unintentional error in interpretation or execution. Training requirements for employees who are entrusted with EAR and ITAR compliance are extensive and perpetual. Considerable amount of company capital is required to keep employees competent in the use and understanding of the EAR and ITAR regulations. In addition, a company involved with EAR or ITAR data or commodities must prepare and adopt extensive and complex written procedures or systems that require company-wide training that entail considerable financial investment and employee time.

There is substantial cost in personnel required to review all foreign orders for EAR & ITAR issues. If an order does trigger either EAR or ITAR, unless there is an exemption or the classification of the product is clear, various on-line forms must be completed requiring the assistance of the customer and the input of extensive employee time. Delivery times are jeopardized and may be seriously compromised if EAR or ITAR require either a commodity determination or a license. An ITAR license application can take 6-8 weeks under the most optimistic scenario.

Recently, Optimax applied to the Department of Commerce, Bureau of Industry Security (BIS) for a license under EAR to export some optics to a customer in Israel. The stated end-use was for a very benign aberration correction and the tolerances were minimal. Actually, the fact that a license was required by BIS was a surprise, since most commodity determination requests made to BIS result in a "No License Required" determination. Since the delivery date was far enough out, the licensing process did not appear to be a problem. However, Optimax was surprised to have its license request denied for national security reasons. Optimax submitted additional information to support its position that the optics were not technically sophisticated and, therefore, could only be dedicated in benign uses. The resubmission was considered by BIS but after an additional 6 weeks BIS informed us that the determination of denial would stand. As a result Optimax has the finished optics ready to be shipped and a very frustrated customer who anticipated receiving the optics, even factoring in the anticipated BIS license, almost 7 weeks ago.



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Optimax completely understands the need for the country to monitor exports of data and articles that could compromise national security and enable certain foreign interests to harm US interests and citizens at home and abroad. But, the complexity and apparent overkill in the type of uses and items covered should be reviewed with the intent to simplify the rules and procedures and reduce the list of controlled items on the Commerce Control List and US Munitions List to only those items that in today's technological age realistically pose a threat. Optimax is competing in a global economy and, therefore, cannot realistically avoid doing business outside US borders. But the cost of labor and time due to EAR and ITAR make pricing and proposed delivery times very difficult to be competitive.

I am hopeful that PIANY with its regional influence, together with the assistance of APOMA with a national presence, can present a meaningful voice to our congressional representatives to request an overhaul of the export controls with the intended goal to achieve a regulatory scheme that achieves the national security goals without strangling international commerce.

Optimax believes that international trade is unavoidable if it is to remain viable as a going concern. The cost of regulatory compliance adds cost to its overhead in terms of time and labor that puts the company at a competitive disadvantage with foreign manufacturers. There must be a way to achieve a reasonable balance between national security and international commerce. Both are good for the country.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Mandina", written over a horizontal line.

Michael Mandina
President
Optimax Systems, Inc.

CC: APOMA