



# Statement for the Record for Associated Builders and Contractors

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*Testimony of*  
Maurice Baskin, Esq

*Before the*  
House Oversight and Government Reform Committee  
Technology, Information Policy, Intergovernmental Relations and  
Procurement Reform Subcommittee

*On*  
“H.R. 735 and Project Labor Agreements: Restoring Competition and  
Neutrality to Government Construction Projects”

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June 3, 2011

**The Voice of the Merit Shop®**

TESTIMONY OF MAURICE BASKIN, ESQ.

BEFORE THE HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE  
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL  
RELATIONS AND PROCUREMENT REFORM

JUNE 3, 2011

Good morning Chairman Lankford, Ranking Member Connolly and members of the subcommittee. My name is Maurice Baskin. I am a partner in the Washington, D.C., law firm of Venable LLP. I have written widely about project labor agreements,<sup>1</sup> known as PLAs, and I have been involved in many of the lawsuits and bid protests filed against government-mandated PLAs in recent years.

I appear before you today on behalf of Associated Builders and Contractors (ABC). ABC is a national construction industry trade association representing 23,000 merit shop contractors, employing an estimated two million workers. ABC's membership is bound by a shared commitment to the merit shop philosophy. This philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts to the lowest responsible bidder through an open and competitive bidding process.

I previously testified on the subject of government-mandated PLAs before the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending. In that testimony, I explained why President Obama's Executive Order 13502 and the subsequent Federal Acquisition Regulatory (FAR) Council rule implementing that order violate the Competition in Contracting Act, 40 U.S.C. 253(a)(1).<sup>2</sup> The executive order discriminates against the 87 percent of construction workers and their contractor employers who choose not to belong to or have contracts with labor unions. Executive Order 13502 and

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<sup>1</sup> See, Baskin, **Government-Mandated Project Labor Agreements: The Public Record of Poor Performance (2011 Edition)** available at [www.abc.org/plastudies](http://www.abc.org/plastudies)

<sup>2</sup> I have provided this subcommittee with a copy of my March 16, 2011 testimony before the Regulatory Affairs, Stimulus Oversight and Government Spending subcommittee, as well as supplemental testimony submitted to committee staff March 23, 2011 and would like to insert these documents into this hearing's official record.

related regulations improperly encourage federal agencies to restrict competition only to the minority of contractors that are willing to enter into union agreements (or that already have entered into them) as a condition of being awarded federal construction work.

Having heard or read the testimony of representatives from the Office of Management and Budget and General Services Administration at two congressional hearings and in other forums, I have yet to hear them identify any factual basis—in the form of market research or identified labor problems previously existing on federal construction projects—that justifies the federal government’s restriction on competition through PLA mandates. At the same time, numerous academic studies and research by the government’s own consultants have established that government-mandated PLAs increase the costs to taxpayers, reduce the number of potential bidders, and do nothing to improve the quality, safety, timeliness or overall efficiency of government construction projects. Indeed, the federal government’s own market researchers have reported that there is no justification for imposing PLAs on federal construction projects in almost all construction markets. Yet the administration is proceeding with its discriminatory, and we believe unlawful, PLA mandates or preferences on projects all over the country.

ABC members have been successful in slowing down the implementation of Executive Order 13502 with a series of successful bid protests at the Government Accountability Office (such as the case in which Mr. Wu participated last year), and we are contemplating court action in the near future. But it is clear to us that only Congress can bring a timely halt to the political favoritism in contract awards that is being promoted by the administration in the guise of Executive Order 13502. So the focus of my testimony today is on the need for immediate passage of H.R. 735, the Government Neutrality in Contracting Act.

H.R. 735 will reinforce the existing federal mandate in favor of full and open competition in all federal

procurements, with specific reference to PLAs. The bill will prohibit federal agencies once and for all from awarding construction projects based on the willingness or unwillingness of contractors to enter into labor agreements. As the bill states, agencies shall neither require nor prohibit contractors from adopting PLAs as a condition of being awarded federal construction work, nor discriminate on that basis. That is all the bill does, and it is long overdue.

There can be no question as to the constitutionality or legality of H.R. 735. The bill tracks almost word for word Executive Orders 13202 and 13208, which President George W. Bush signed in 2001. The United States Court of Appeals for the District of Columbia Circuit upheld the Bush Executive Order(s) in the case of *Building and Construction Trades Dept., AFL-CIO v. Allbaugh*, 295 F. 3d 28 (DC. Cir. 2002). It also should be noted that the primary ground for challenging the Bush executive order was that the president acted in derogation of an Act of Congress, namely the National Labor Relations Act. The Court of Appeals rejected that claim even as to the president's order, but the claim of labor law preemption carries no weight against another Act of Congress, such as H.R. 735.

Even if there were a concern about avoiding interference with the regulatory scheme of the NLRA, H.R. 735 sets that issue to rest by expressly disclaiming any intent to interfere with any labor agreement that is authorized or protected by the NLRA. Specifically, Section 3(a)(3) of the bill states: "Nothing in [the bill's prohibitions] shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described [therein]." Thus, the sole stated purpose or effect of H.R. 735 is to prohibit the government from mandating PLAs or giving preference to them, something that the NLRA says nothing about. As stated in the bill's title, the legislation is confined to the objective of restoring government neutrality to the issue of private contractors' labor relations and maintaining full and open competition in government procurements.

ABC again applauds the efforts of the Oversight and Government Reform Committee to exercise oversight over the administration's wasteful and unlawful push for PLAs on federal and federally assisted construction projects. We urge you to pass H.R. 735 so the federal government will once again adhere to the principles of full and open competition in construction procurements, and bring an end to the administration's gross favoritism toward organized labor's special interest group.



## Maurice Baskin

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Maurice Baskin is a partner in Venable's Labor and Employment Law Practice Group.

Mr. Baskin focuses on all aspects of labor and employment law representing management. He counsels and litigates on behalf of employers dealing with union organizing, collective bargaining, wrongful discharge, employment discrimination, arbitration, government contracts, wage/hour law and "prevailing" wages, executive agreements, unfair competition, and personnel advice.

As attorney for Associated Builders and Contractors, Inc. (ABC) and many of its 23,000 members, Mr. Baskin has served as one of the chief legal advocates for the rights of construction employers. He also represents management in a number of other service sectors, including hospitality, telecommunications, higher education, security, nonprofits/trade associations and government contractors.

Mr. Baskin has defended the rights of employers at all levels of the federal and state courts, including service as lead counsel before the U.S. Supreme Court. He also regularly appears before administrative agencies dealing with both labor and employment issues.

Mr. Baskin is a frequent speaker and author on labor and employment law issues including project labor agreements (PLAs), prevailing wage laws, the National Labor Relations Act, independent contractor misclassification, government contracts, changes to disability law, hiring and firing, and employee verification.

### HONORS

Listed in *The Best Lawyers in America* for Labor and Employment Law (Woodward/White, 2010 and previously).

Listed in *District of Columbia Super Lawyers* for Labor and Employment (2010 and previously).

Selected as one of the Top One Hundred Labor Attorneys in the United States (Labor Relations Institute, 2009 and previously).

### AREAS OF PRACTICE

Labor and Employment  
Appellate Litigation  
Class/Collective Actions  
Government Contracts

### INDUSTRIES

Construction  
Communications  
Education  
Government Contractors  
Health Care  
Hospitality  
Nonprofit Organizations and Associations  
Security

### BAR ADMISSIONS

District of Columbia, Maryland and Florida  
U.S. Supreme Court  
U.S. Courts of Appeals for the District of Columbia, First, Third, Fourth, Sixth, Seventh, Eighth, and Ninth Circuits  
U.S. District Courts for the District of Columbia and Maryland

### EDUCATION

University of Florida School of Law, J.D., with honors, 1978  
Senior Editor, Law Review  
Moot Court Winner and Chair

Harvard University, B.A., *magna cum laude*, 1975

Committee on Oversight and Government Reform  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name: MAURICE BASKIN, GENERAL COUNSEL, ASSOC. BUILDERS & CONTRACTORS

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

NONE APPLICABLE (N/A)

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

MR. BASKIN IS TESTIFYING ON BEHALF OF ASSOCIATED BUILDERS and CONTRACTORS, INC (a 501-c(6) organization) as its GENERAL COUNSEL.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

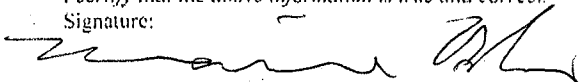
source: U.S. DEPARTMENT OF LABOR

amount: \$624,300.00

grant name: "ADVANCING REGISTERED APPRENTICESHIP INTO THE 21st CENTURY"

date: AUGUST 12, 2009

I certify that the above information is true and correct.  
Signature:



Date: MARCH 15, 2011