WORKPLACE SAFETY: WHY DO MILLIONS OF WORKERS REMAIN WITHOUT OSHA COVERAGE?

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

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WORKPLACE SAFETY: WHY DO MILLIONS OF WORKERS REMAIN WITHOUT OSHA COVERAGE?

Thursday, May 24, 2007
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 10:33 a.m., in Room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Payne, Bishop, Shea-Porter, Hare, Andrews, Wilson, and Kline.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health/Safety Professional; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Senior Policy Advisor for Subcommittee on Workforce Protections; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Michael Gaffin, Staff Assistant, Labor; Peter Galvin, Senior Labor Policy Advisor; Jeffrey Hancuff, Staff Assistant, Labor; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Joe Novotny, Chief Clerk; Mark Zuckerman, Staff Director; Michele Varnhagen, Labor Policy Director; Steve Forde, Minority Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Legislative Assistant; Richard Hoar, Minority Professional Staff Member; Victor Klatt, Minority Staff Director; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairwoman WOOLSEY [presiding]. A quorum is present. The hearing of the Workforce Protection Subcommittee on "Workplace Safety: Why Do Millions of Workers Remain Without OSHA Coverage?" will come to order.

Pursuant to Committee Rule 12(a), any member may submit an opening statement in writing which will be made part of the permanent record.

Now I recognize myself, followed by Ranking Member Joe Wilson, and then followed by Chairman Rob Andrews from another subcommittee, and we will go in that order, and then we will go to the wonderful panel of witnesses.

So I want to thank all of you for being here today to address the serious shortcoming in our federal OSHA law: the lack of coverage for public employees.

I am especially grateful to you, Ms. Jones, for being willing to come forward to testify about the human cost of our failure to provide health and safety protection to all workers.

While OSHA covers most private workers and an Executive Order covers most federal workers, there is no comparable coverage for over 8.5 million state, county and municipal workers. The tragedy is that Congress gave the states the opportunity to cover their public employees with the promise of matching funds, but today, 37 years after the passage of OSHA, 26 states still do not have OSHA-approved state plans that would cover public employees.

These employees work in a wide variety of areas and may be highway construction workers. They may be wastewater treatment plant workers like Mr. Jones; they may be hospital personnel, correctional officers; and they work in the same hazardous environments that private-sector employees work in.

Every month, dozens of public employees in this country are killed or injured—thousands are injured—in accidents that could have been prevented had their workplace been covered by OSHA.

It is important to remember that when we speak of OSHA coverage, we are talking about more than compliance with specific OSHA standards. In fact, OSHA sets out a number of other provisions that are critical to safe workplaces, and these include: the ability of workers to request and participate in inspections by an outside authority and to have an independent investigation of every fatality and significant workplace injury; the enforcement of the law and training on health and safety standards and hazards; a whistleblower provision protecting workers against retaliation for exercising their health and safety rights; and the right of workers to have access to critical information regarding their health, exposure to certain hazards, along with statistics on injury and illness at their worksites.

And as an aside, this subcommittee is also working to ensure what I just listed actually has teeth. So know that.

Without OSHA coverage, workers have none of these basic rights, even if these rights are not always supported by OSHA itself.

So let me give you a brief illustration about how important these rights are.

Tony Poole, a 42-year-old public employee, was killed in Byron, Georgia, last year when a trench collapsed on top of him. Because Georgia does not approve coverage for its public employees, there was never any OSHA investigation into the reason why Mr. Poole was killed. Had there been an investigation, his family, and his friends, his co-workers might have learned that if an OSHA trench standard requiring that the use of a trench box to keep the trench from caving in had been in place, Tony Poole would be alive today.

Today, we will hear from Casey Jones whose husband, Clyde, was needlessly killed last year in an explosion at the Bethune Wastewater Treatment Plant, a facility owned and operated by the City of Daytona Beach, Florida. This incident caught the attention of the United States Chemical Safety Board, and it decided to in-

vestigate precisely because the employees of the City of Daytona Beach, such as Mr. Jones, were not covered by OSHA.

Let me first say something about the U.S. Chemical Safety Board. It is an independent investigative agency created by Congress in the wake of major chemical explosions in the 1980s, and it is charged with investigating major chemical-related incidents. The board consists of five individuals appointed by the president for 5-year terms, and all the current members on the board were appointed by President Bush.

In the accident involving Mr. Jones, the board found that several OSHA standards had been violated, standards that, if followed, would have prevented the explosion. As a result, it recommended to the Florida state legislature and to the governor that the state pass legislation providing OSHA coverage to public employees.

I think it should be noted that this board has submitted testimony for this hearing today calling for OSHA coverage for all public employees.

Now, there are many who object to providing OSHA coverage to state, county and municipal employees on the grounds that it is too expensive, and I will be interested to hear the views of safety manager Jon Turnipseed on this very subject.

As a purely economic matter, the money saved in workers compensation and other costs by covering public employees should and would more than pay for these programs. However, it is impossible to quantify the cost to victims or to their families of these senseless and preventable injuries and deaths.

But I do know this: The cost is too high, and we in Congress must do whatever we can to fulfill the promise OSHA made 37 years ago to provide all workers—that means all workers—with safe and healthful workplaces.

Mr. Wilson?

[The prepared statement of Ms. Woolsey follows:]

Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman, Subcommittee on Workforce Protections

I want to thank everyone for coming here today as we address a serious shortcoming in our federal OSHA law: the lack of coverage for public employees.

And I am especially grateful to you, Mrs. Jones, for being willing to come forward to testify about the human cost of our failure to provide health and safety protection to these workers.

For while OSHA covers most private workers and an Executive Order covers most federal workers, there is no comparable coverage for over 8.5 million state, county and municipal workers.

The tragedy is that Congress gave the states the opportunity to cover their public employees with the promise of matching funding, but today, 37 years after the passage of OSHA, 26 states still do not have OSHA-approved state plans that would cover public employees.

These employees work in a wide variety of areas and may be highway construction workers, wastewater treatment plant workers like Mr. Jones, hospital personnel or corrections officers.

And they work in the same hazardous environments that private sector employees do.

Every month, dozens of public employees in this country are killed and thousands injured in accidents that could have been prevented had their workplaces been covered by OSHA.

It is important to remember that when we speak of OSHA coverage, we are talking about more than compliance with specific OSHA standards.

In fact, OSHA sets out a number of other provisions that are critical to safe workplace. These include:

• The ability of workers to request and participate in inspections by an outside authority and to have an independent investigation of every fatality and significant workplace injury;

• The enforcement of the law and training on health and safety standards and hazards;

• A whistleblower provision protecting workers against retaliation for exercising their health and safety rights; and

• The right of workers to have access to critical information regarding their health, exposure to certain hazards, along with statistics on injury and illnesses at their work sites.

Without OSHA coverage, workers have none of these basic rights.

Let me give you a brief illustration about how important OSHA rights are.

Tony Poole, a 42 year old public employee, was killed in Byron, Georgia last year when a trench collapsed on top of him.

Because Georgia does not provide coverage for its public employees, there was never any OSHA investigation into the reason why Mr. Poole was killed.

Had there been an investigation, his family, friends and co-workers might have learned that if an OSHA trenching standard—-requiring that the use of a trench box to keep the trench from caving in—-had been in place, Tony Poole would be alive today.

Today, we will hear from Casey Jones, whose husband, Clyde Jones, was needlessly killed last year in an explosion at the Bethune Wastewater Treatment Plant, a facility owned and operated by the City of Daytona Beach in Florida.

This incident caught the attention of the U.S. Chemical Safety Board, and it decided to investigate precisely because the employees of the City of Daytona Beach, such as Mr. Jones, were not covered by OSHA.

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The Board consists of 5 individuals appointed by the President for five-year terms, and all the current members on the Board were appointed by President Bush.

In the accident involving Mr. Jones, the Board found that several OSHA standards had been violated, standards that if followed, would have prevented the explosion.

As a result, it recommended to the Florida State Legislature and the Governor that the State pass legislation providing OSHA coverage to public employees.

I think it should be noted that this Board has submitted testimony for this Hearing today, calling for OSHA coverage for all public employees.

Now, there are many who object to providing OSHA coverage to state, county and municipal employees on the grounds that it is too expensive.

And I'll be interested to hear the views of a safety manager—Mr. Jon Turnipseed—on this subject.

As a purely economic matter, the money saved in workers compensation and other costs by covering public employees should more than pay for these programs

However, it is impossible to quantify the costs to victims or their families of these senseless and preventable injuries and deaths.

But I do know this. The cost is too high, and we in Congress must do whatever we can to fulfill the promise OSHA made 37 years ago to provide all workers with a safe and healthful workplace.

Mr. WILSON. Thank you, Madam Chairman.

Good morning. I would like to welcome our witnesses today and thank them for their testimonies. I look forward to our discussion.

Before we begin, I believe it is important to provide some context for this morning's hearing.

First of all, we should recognize that the Occupational Safety and Health Act explicitly allows states to adopt workplace health and safety programs to cover state and municipal employees, a group brought into focus by our current hearing today.

Likewise, it is important to understand that under current law OSHA is able to inspect every worksite very rarely, which, by any reasonable measure, is a clear sign that the agency has difficulty enforcing laws already on the books. In other words, its ability to

take on a new layer of responsibilities, as some in Congress are looking to mandate, is questionable at best.

And finally, it can be argued that state and local regulators, not politicians or federal bureaucrats in Washington, are more attuned to the work environments in their unique states and communities.

Taken together, what does all of this mean? At a minimum, I believe it means that any attempts out of Washington to expand OSHA's jurisdiction raises significant questions as to how this expansion will be funded as well as those of federalism in deference to communities' rights and interests.

Furthermore, I believe it means that rather than expanding the jurisdiction of an already overburdened federal OSHA, Congress should be incentivizing states to adopt workplace health and safety programs of their own instead of force unfunded mandates upon them or asking OSHA to extend itself even further.

My home state of South Carolina is what is known as a state plan state. My state and 20 others have submitted comprehensive health and safety plans that meet or exceed federal standards to the secretary of labor, who in turn verified and approved them. As a result, these states receive 50 percent of their enforcement costs from federal OSHA and, consequently, accept responsibility for regulating the workplace health and safety of both private-and public-sector employees.

In short, the state plan works well to protect employees, regardless of sector, and should be a key focus as Congress works to enact any reforms to federal health and safety laws.

At this time, I would like to introduce an article for the record entitled "Regulatory Federalism and Workplace Safety: Evidence From OSHA Enforcement, 1981 to 1995."

Chairwoman WOOLSEY. Without objection.

[The information follows:]

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ORIGINAL ARTICLE

Regulatory federalism and workplace safety: evidence from OSHA enforcement, 1981–1995

John Charles Bradbury

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Abstract The Occupational Safety and Health Act (OSH Act) gives states the option to enforce federal occupational safety and health standards on their own instead of relying on the federal Occupational Health and Safety Administration (OSHA). This legislative provision provides an opportunity to analyze a homogenous set of regulatory standards enforced by heterogeneous agents engaged in interjurisdictional competition. This study finds important differences in the effectiveness of enforcement options measured by occupational mortality. State-administered OSHA programs are associated with fewer workplace fatalities than states regulated at the federal level. This finding is consistent with regulatory federalism and government-as-facilitator models of OSHA enforcement.

Keywords OSHA · Workplace regulation · Federalism

JEL Classification D73 · L51

1. Introduction

In 1970 the federal government passed the Occupational Safety and Health Act (OSH Act) into law amid increasing concern about the safety of American workers. Lawmakers designed the legislation for the purpose of protecting employees from injury and illness in the workplace. The law created several provisions to increase workplace safety and established the Occupational Safety and Health Administration (OSHA) to create and administer workplace standards to improve the safety and health of American workplaces. Section 18 of the OSH Act contains an oversight option that permits any state that wishes to enforce the federal standards set forth by OSHA to do so, assuming the state plan meets certain federal

J. C. Bradbury
Department of Economics,
Sewanee: The University of the South,
735 University Ave,
Sewanee, TN 37383-1000, USA
Phone: +931-598-1721
Fax: +931-598-1145
e-mail: jbradbur@sewanee.edu

requirements. Thus, any state may enforce the federal regulations on its own, or it can allow the federal OHSA to govern the state's workplaces. This provision provides an interesting natural experiment to test the differences between federal and state regulatory enforcement.

There are two reasons why regulatory outcomes may differ with enforcement choice. First, following the seminal work by Tiebout (1956) on fiscal federalism, economists have touted the virtues of interjurisdictional competition between states to produce the efficient level of public goods. Similarly, interjurisdictional competition gives state government officials the incentives to produce the optimal level of regulation. Inefficiently high and low levels of regulation can harm reelection-maximizing political representatives. Inefficient enforcement can lead to exit by both citizens and industry—which, in turn, lowers the available tax revenues available to politicians—and possibly deelection. States that regulate firms through monetary penalties or cooperative policies risk losing industry, if enforcement is inefficiently high, and workers, if enforcement is too low. Also, states that operate more efficiently than a competing jurisdiction may attract migration of businesses and workers to the state. While federal OSHA inspectors have no incentives to promote the optimal level of enforcement in a particular state, parochial agents of state representatives do.

Second, local regulators may be more attuned to the business environment of a particular state; therefore, local regulation may be more efficient as a result of lower monitoring costs. This is consistent with the Scholz and Gray (1997) government-as-facilitator model. This model views OSHA regulations as a solution to a collective action problem faced by workers and employers. Occupational safety is a function of joint investments by both parties. Workers and employers both benefit from actions taken by the other party to increase safety; however, each party prefers to free-ride on the investment of the other. If this is the case, then neither party achieves its desired level of safety. Scholz and Gray (1997) postulates that OSHA increases safety not just through coercive penalties, but it also facilitates cooperation by offering a focal point for employers and employees to utilize in solving this collective action problem. If local regulators are more familiar with the local business environment than federal regulators, state programs may be more effective at achieving cooperation than federal OSHA.

Of course, it is also possible that the decentralization of OSHA may be harmful by creating a "race to the bottom" competition between states to lower regulatory enforcement in order to attract commerce. Businesses seeking to earn extra profits by avoiding costly OSHA regulations may create political pressure on state regulators to relax the enforcement of OSHA standards to promote business. Local regulators may be more susceptible to regulatory capture than federal regulators. If lobbying local officials is less costly than lobbying at the national level, then state-regulated firms may more easily circumvent the federal regulations. Therefore, interjurisdictional competition may have negative consequences, especially when combined with regulatory capture. Government officials who seek to attract business from other states may dilute regulatory enforcement, as companies migrate to states with lenient OSHA enforcement. This leads to a mass dilution of OSHA enforcement, where all the states seek to lower regulatory standards at the expense of worker safety, to attract commerce.

Another aspect of this analysis is its application to the study of federalism. While many scholars use the term "fiscal federalism" to refer to the competition between states in use of fiscal policy, the same logic applies to state regulatory enforcement. Studies of the costs of regulation find substantial efficiency burdens, thus states that can minimize costs to its residents to foster immigration and deter emigration by adjusting regulatory enforcement.[1]

[1] Johnson (2001) provides the most recent estimate of the costs of OSHA. The costs range between \$7.4 and \$57 billion, with the best estimate being \$41 billion. Also, see Crain and Hopkins (2001) for an examination of the large burden on small firms.

Though other studies often examine differences in state performance in light of the Tiebout hypothesis, it is rare to have an opportunity to examine a homogenous set of federal mandates (OSHA regulations) that are enforced by heterogeneous agents (federal and individual state regulators). Thus, this "regulatory federalism" creates competition between states based solely on different methods of enforcement of exogenous regulatory standards.

To my knowledge, no previous study has examined the difference in OSHA enforcement by state and federal regulators. In fact, it is standard treatment in studies of OSHA enforcement to exclude state OSHA states from the analysis.[2] This is a major gap in the current understanding of regulatory enforcement considering that 24 states administer some portion of the OSHA programs themselves. In this paper I compare the effectiveness of the two enforcement options in improving workplace safety. Using a new data set on workplace fatalities, I find important differences in the effectiveness of enforcement options. Consistent with the predictions of federalism, I find that states that govern their own OSHA programs experience fewer workplace fatalities than states that utilize federal enforcement. The remainder of the paper is organized as follows. Section 2 provides a brief statutory history of OSHA and discussed the relationship between federal and state OHSA regulatory systems. Section 3 develops and tests an empirical model of regulatory enforcement in US states. Section 4 concludes the paper with a discussion of results and implications for future research.

2. OSHA and the States

2.1. OSHA's history

Since the industrial revolution citizens, social activists, and government officials have expressed increasing concern for employee safety in the workplace, particularly in jobs that involve manual labor. Many individuals feel the unregulated business atmosphere exposes workers to serious health risks. If the interests of managers and workers are incongruent, then the private market may fail to properly protect employees. In the late-1960s concerns over worker safety reached new importance on Capitol Hill. Senator Harrison Williams and Congressman William Steiger led the push for federal legislative action to improve working conditions for Americans by advocating "the safety bill of rights." This laid the groundwork for the OSH Act, also known as the Williams–Steiger Act, which Richard Nixon signed into law in 1970.[3] The OSH Act created a system for identifying and regulating health and safety hazards in the workplace through preventive oversight and enforcement. The OSH Act delegated the regulatory oversight to the newly created OSHA. OSHA has the power to implement and enforce regulations that increase worker safety. Though the operating procedures of OSHA have changed over the years its enforcement tools include workplace training, targeted inspections, responding to complaints, investigating occupational accidents, and punishing violations.

Over its history, evidence of OSHA's effectiveness as a regulatory agency has been somewhat weak, especially during its early years. Viscusi (1979) provides the first study of OSHA enforcement from 1972 to 1975, and finds very little evidence of any impact on workplace safety. He notes that the high cost of compliance coupled with low expected penalties for

[2] All but two of the OSHA studies cited in this paper exclude state programs from the analyses of OSHA enforcement. Russer and Smith (1988) and Klick and Stratmann (2003) are the exceptions. This exclusion occurs because OSHA did not include data from state administered programs in the Integrated Management Information System (IMIS) until the mid-1980s.

[3] For a detailed history of OSHA see Fleming (2001).

violations creates little incentive for firms to comply with OSHA to improve workplace safety. Bartel and Thomas (1985) finds a weak correlation between compliance with OSHA standards and injury rates from 1972 to 1979. The study postulates that OSHA standards, which focus on capital equipment, do not remedy the main causes of workplace accidents. The authors find that although firms do respond to coercive regulatory pressure, the enforced regulations have little effect on workplace safety.

The failure of OSHA to produce identifiable reductions in workplace injuries is likely the result of the low-expected cost of any violation. Beginning in 1981, OSHA adopted the records-check inspection strategy to target high-risk violators. Using data on average industry accidents OSHA targeted its inspection resources towards likely violators, increasing the expected penalty of violations. Russer and Smith (1988) find a 5–14% decline in workplace injuries in firms subject to records-check inspections, indicating that this policy change enhanced OSHA's effectiveness in the workplace. With a follow up to his earlier study Viscusi (1986) finds a positive yet modest impact on worker safety in the manufacturing sector from 1973 to 1983 with respect to the incidence of lost workdays due to illness and injury. This may be attributable to the introduction of the records-check enforcement strategy.

More recent empirical studies also find a negative correlation between OSHA enforcement and workplace injuries, but that correlation seems to be declining. Two empirical studies by Gray and Jones (1991a, b) find OSHA inspections to be associated with fewer OSHA violations. As to the impact of compliance on occupational safety Scholz and Gray (1990) estimates that a 10% increase in inspections is associated with a 1% decline in occupational injuries. Gray and Scholz (1993) finds inspections associated with penalties results in a 22% decline in injuries. However, Gray and Mendeloff (2002) find that post-1985 and into the 1990s the responsiveness of workplace safety to inspections slowly declined to almost nothing. Also, using a different estimation technique Klick and Stratmann (2003) find a positive correlation between inspections and death rates for the 1990s.[4] The authors hypothesize that this counter-intuitive outcome results from the moral hazard of workers, who overestimate the effectiveness of OSHA standards.

Regardless of whether or not OSHA regulations reduce injuries, past studies find evidence that many firms comply with OSHA standards even though the cost of doing so exceeds the expected penalty for noncompliance. Weil (1996) finds that minimal pressure from OSHA, via inspections and fines, is positively associated with compliance, even though expected penalties are less than the average cost of compliance. Why do firms respond to OSHA regulations when the penalties appear to be too low to have any effect?

The economic theory of crime predicts that rational criminals choose to engage in criminal activity when the expected benefits of crime exceed the costs (Becker, 1968). Increasing rewards and decreasing punishments should be associated with greater criminal activity. Economists traditionally use this model to predict regulatory compliance. Though past studies support the causal relationship between penalties and compliance, levels of compliance are far too high to be explained solely by this model. The government-as-facilitator model, developed by Scholz and Gray (1997), provides a possible explanation for the health and safety effects of OSHA despite its lack of regulatory bite as an enforcer.

Scholz and Gray (1997) correctly models workplace safety as a collective action problem, where workplace safety is a function of joint investments by workers and employers in time, effort, and income. Though either party may benefit from investments in safety, each would prefer to free-ride on the other party's investment. While regulation may encourage

[4] Klick and Stratmann (2003) use states with final approval for state OSHA enforcement as an instrument in the examination of the effects of inspections on workplace safety.

safety through coercive responses to violations, it may also function to properly allocate joint investments in safety. Regulation may enhance both parties welfare through two mechanisms. First, the regulations reduce negotiation costs. Bargaining between workers and employers is more likely to achieve a cooperative solution, where the failure to achieve the solution can result in a fallback regulation set by the regulatory agency. OSHA regulation acts as a focal point upon which the parties can coordinate investments in safety. Second, regulation reduces monitoring costs of agreements. As a third party to any agreements the regulator can credibly enforce agreements, on which both parties have an incentive to renege.[5] Thus, regulators may facilitate cooperation to increase workplace safety in addition to coercive enforcement. The authors find support for the model noting that OSHA inspections without penalties are associated with declines in injury rates, which is inconsistent with the standard coercive model of OSHA enforcement.

2.2. Regulatory federalism

Though the OSH Act created a federal program to oversee workplaces throughout the United States, an often overlooked aspect of this regulation is the inclusion of a role for states. Section 18 allows any state to control its OSHA program as long as it demonstrates it can operate at least as effectively as the federal agency.[6] OSHA still monitors state programs and provides up to 50% of the operating costs. States must conduct inspections to enforce standards as well as operate training and educational programs to encourage health and safety. A state that chooses to oversee OSHA on its own must first present an initial "developmental plan," which details how the state is capable of regulating all aspects of occupational health and safety within the next 3 years. Following the initial approval of the plan the state and OSHA may enter into an "operational status agreement," which gives the state the sole responsibility of overseeing OSHA regulations in the state. At this stage the state begins regulating workplace safety within its borders, and federal OSHA terminates its enforcement program within the approved state. A year after entering into an operational status agreement the state is eligible for "final approval" by OSHA. Final approval conveys few additional changes to the operational status, as it only indicates that the state has met 100% of the requirements to operate on its own. However, numerous states operate for many years with just an operational status agreement.[7]

Currently, 24 states and two US territories have some form of OSHA-approved occupational safety and health plans. The states with OSHA-approved plans are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, New York, and New Jersey have state plans that cover only state and local government employees, while federal OSHA monitors the rest of the state. For this analysis I treat these three states as federal OSHA states. Two US territories, Puerto Rico and the Virgin Islands, also operate their own OSHA programs. Table 1 lists the states that operate their own OSHA programs as well as the dates of federal certification of operational status. The table also identifies states yet to receive final approval of their state plans, though this has little *de facto* impact on state enforcement. By 1977

[5] See Williamson (1979) for a transactions costs model of agreement enforcement.

[6] Each state is judged to be "at least as effective as the Federal OSHA program" according to state-specific and not absolute standards that apply to all states.

[7] OSHA provides a detailed description of the state program approval procedure on its website (http://www.osha-slc.gov/fso/osp/).

Table 1 States that regulate OSHA

State	Operational status agreement	Year state OSHA enforcement certified
Alaska		1977
Arizona		1981
California	X	1977
Hawaii		1978
Indiana		1981
Iowa		1976
Kentucky		1980
Maryland		1980
Michigan	X	1981
Minnesota		1976
Nevada		1981
New Mexico		1984
North Carolina		1976
Oregon	X	1982
South Carolina		1982
Tennessee		1978
Utah		1976
Vermont	X	1977
Virginia		1984
Washington	X	1982
Wyoming		1980

Connecticut, New Jersey, and New York oversee OSHA enforcement for the government sector only. Federal OSHA governs the rest of the states workplaces

all of these states had applied for initial candidacy to be operational status states. In 1976 Alaska, North Carolina, and Utah were the first states reach operational status agreements with OSHA, thereby certifying these programs. Most states took over OSHA enforcement during the late-1970s and early-1980s.

The separate enforcement of OSHA standards leads to the obvious question as to the differences in enforcement by these agencies. The literature on federalism postulates many advantages from decentralization of government policies. The literature begins with Tiebout (1956), which develops the first model of competition between geographically stable governments with a mobile population. States that offer the correct bundle of goods and services in the most efficient manner will attract residents to migrate to the state. Failure for one state to respond to the superior policies of a neighbor will result in exit by both citizens and businesses. Thus, the decentralization of government produces competition that leads to the optimal provision of public resources. Of course, this model has weaknesses, especially the assumption of costless entry and exit; however, several studies have found evidence of Tiebout competition between US states.[8]

The Tiebout model directly applies to the decentralization of OSHA regulation enforcement among the states. Regulations impose efficiency losses on citizens and industry. Efficiency losses from regulations induce workers and businesses to migrate from states with lesser efficiency to those with greater efficiency. Thus, states have an incentive to undertake steps to improve regulation within the state. Though no state can implement regulations less stringent that federal OSHA, states can promulgate additional regulations and procedures

[8] Oates (1999) provides an excellent summary of the literature on Tiebout hypothesis. Also, see Strumpf (2002) for a model of interjurisdictional competition with positive external effects, which can lead states to under-innovate in Tiebout competition.

that facilitate workplace safety. Some examples of state OSHA program innovations include: increasing electronic access to information (Oregon and Washington), developing industry-specific partnerships (several states), introduction of plain language standards (Washington), financial incentives (Hawaii and Wyoming), and awards programs (Indiana, Kentucky, and Michigan).[9] Additionally, states may be more effective at applying non-official means of enforcement to ensure workplace safety. In light of the government-as-facilitator model of regulation, states may be more apt to utilize state regulators to enforce cooperative agreements. States that do a better job of solving this collective action problem will be more successful in Tiebout competition between states.

However, it is also possible that interjurisdictional competition could encourage states to regulate workplace safety less stringently than with federal oversight. State regulators must remain responsive to local political interests, who may have an incentive to lower regulatory enforcement to attract business. Politicians who seek to attract tax revenues from immigrating industries may seek to manipulate OSHA regulatory enforcement to achieve this goal. The competitive incentives between states may cause a "race to the bottom" in regulatory enforcement, which would result in less workplace safety. A federally administered OSHA programs does not generate the same political incentives. Therefore, there is reason to believe that the decentralized regulatory structure of OSHA may have some negative consequences as well.

3. Empirical Model

3.1. Data and empirical strategy

Recently published mortality data from the National Institute for Occupational Safety and Health's National Traumatic Occupational Fatalities (NTOF) surveillance system compiled by Marsh and Lane (2001) provides a useful dataset for examining regulatory effectiveness across states. The NTOF uses death certificates to quantify workplace fatalities across the United States. While other proxies for regulatory effectiveness exist, I limit the analysis to mortality for this study. Current data on non-fatal injuries is not well documented at the state level, especially in states that administer their own OSHA programs. Since one of the goals of the OSH Act is to reduce fatalities, this is a reasonable measure to quantify success. Another advantage of using the death rate as a dependent variable is its simple quantification. Regulators and managers in different states or worksites may code similar incidents differently. Mortality is a discrete and easily definable characteristic across all states and worksites. Also, the authors obtain the mortality statistics from the cause of death listed on death certificates. Statistics on occupational accidents compiled by self-interested regulatory authorities may be less reliable due to the incentives to underreport or overreport deaths. Finally, the NTOF is compiled by a single source for a 16-year period, which provides consistent data over a significant period of time.

A general analysis of the data provides mixed evidence on the relationship between occupational mortality and regulatory agency. Table 2 lists the average annual mortality rates under state and federal OSHA enforcement as well as other summary statistics. Without controlling for any other factors there does not seem to be any clear differences between the regulatory agencies. Federal administered programs have a much lower mean death rate than states that took over the administration of the regulations; however, the median death rate is

[9] Occupational Safety and Health State Plan Association (1999) details many innovations. (http://www.osha-slc.gov/fso/osp/oshspa/grassroots_worker_protection99/index.html)

Table 2 Summary statistics

		Observations with federal OSHA regulation	Observations with state OSHA regulation	Difference between federal and state(%)	All states
Death rate (per million workers)	Mean	63.3	68.7	−8	65.3
	Median	57	54	−6	56
Economy variables					
GSP (per capita)	Mean	$23,000	$25,623	−1	$24,020
	Median	$22,485	$23,718	−5	$23,039
GSP Growth	Mean	1.95	1.76	10	1.87
	Median	1.92	2.1	−9	1.94
Employment variables					
Total Employment	Mean	2,647,473	2,523,984	5	2,599,467
	Median	1,763,235	1,820,317	−3	1,790,327
Manufacturing Share	Mean	14.57	13.08	11	13.99
	Median	14.98	13.61	1	14.36
Construction Share	Mean	5.12	5.55	−8	5.28
	Median	4.97	5.42	−8	5.12
Transportation Share	Mean	4.88	4.76	3	4.84
	Median	4.91	4.57	8	4.72
Agriculture, Farming, and fishing	Mean	0.93	1.17	−21	1.03
	Median	0.83	0.89	−7	0.85
Service share	Mean	24.89	25.8	−4	25.2
	Median	24.74	25.19	−2	24.88
Mining share	Mean	1.25	1.26	−1	1.25
	Median	0.53	0.36	46	0.42
Private enforcement variables					
Union workers (% of workforce)	Mean	16.7	16.87	−1	16.77
	Median	16.1	17	−5	16.35
Income (per worker)	Mean	$37,188	$36,970	0.05	$37,103
	Median	$36,134$	$35,944	0.05	$36,066
Workers Comp. Payments (per worker)	Mean	$69.23	$89.16	−22	$76.98
	Median	$23.02	$42.33	−46	$28.76

All monetary values reported in 1996 dollars

lower in states that adopted their own programs. Also important is the significant death rates of the state-administered programs in Alaska (243 per million) and Wyoming (167 per million). Both of these states appear to be outliers with death rates several standard deviations above the average. However, when I exclude these states from the sample the state OSHA mean death rate still exceeds the federal OSHA states.

For a more thorough inspection of the data I use Equation (1) to examine the effects of various factors on workplace mortality across states and over time using a random-effects least squares regression estimation method, which corrects for detected first-order serial correlation.[10]

[10] I use the Baltagi and Wu (1999) GLS estimator using the Stata "xtregar" command.

$$D_{it} = \eta R_{it} + \lambda M_{it} + \Phi \mathbf{X}_{it} + \Psi \mathbf{E}_{it} + \theta \mathbf{P}_{it} + \tau_t + \varepsilon_{it} \quad (1)$$

Equation (1) estimates effect of many factors on D_{it}, the natural log of the death rate per million workers in state i and year t from 1981 to 1995. τ is a vector of year effects equal to one for each year, and ε is the error term. I use this time period for two reasons. First, the standardized NTOF mortality data exists for this time-period. Second, as noted in the above discussion of previous studies, OSHA enforcement was sporadic and often quite ineffective until the agency modified its enforcement strategy in 1981.

The main variable of interest, R, is a dummy variable equal to one when a state administers OSHA enforcement and zero when the administration is federal. I consider a program to be state-controlled the year after OSHA approves its operational status agreement. This is consistent with the legal procedure for establishing state control, where a state takes charge after reaching operational status.[11] However, there is an obvious problem of selection bias with using a dummy variable as a regressor in a simple linear regression. It is likely that states that choose to self-regulate OSHA standards share omitted characteristics that correlate with the occupational death rates in these states. Therefore, η may overestimate the impact of state enforcement on workplace fatalities due to omitted variable bias. Because all of the self-enforcement states adopted state plans within a few years of each other, I account for selection bias by controlling for the factors that determined the enforcement choice by employing a "treatment effects" correction for selection bias.[12] To make the correction, I first estimate the likelihood that a state adopted a state plan using a probit regression.[13] Next, using the results I calculate the inverse Mills ratio (M) and include it as an independent variable in the regression. Greene (2000) demonstrates that the inclusion of the inverse Mills ratio controls for the hypothesized omitted variables so that η is not biased. This correction ought to eliminate the potential selection bias.

Vector X contains variables that control for economic conditions of the state in a given year. First, I include per capita gross state product (GSP) to measure wealth effects on mortality. Health and safety are generally considered to be normal goods; thus, wealthier states ought to consume more safety (Pritchett & Summers, 1996). I also include per capita GSP growth, because workplace accidents tend to be procyclical (Conway & Svenson, 1998). Output varies more than employment, and thus in time of expansion the employees must produce more output. Greater output increases the opportunity for injury as well as exacerbating fatigue, thereby increasing the likelihood of worker injuries. In addition any new employees hired during expansions will be more likely to be injured due to lack of experience.

Vector E contains variables to measure the employment characteristics of the state's workforce in a given year. First, I include the total number of workers employed in the state. This variable isolates changes in the death rate that result from changes in the number of deaths from changes in the size of the workforce. Additionally, this variable also captures any economies of scale in regulation of the workforce. Second, I use several measures of the industrial composition of the workforce. Different industries impose differing levels of occupational risk. Table 3 lists the number of occupational deaths by industry. Mining has the highest fatality rate followed by agriculture, forestry, and fishing; construction; and transportation,

[11] I also ran several specifications with a separate variable for states with final approval of state programs, and I found no effect of final approval status on workplace fatalities.

[12] Greene (2000, pp. 930–334) provides a description of this technique. See Flannery and Houston (1999) for an example of its application.

[13] I estimated the probability of adopting a state plan as a function of income per capita, the natural log of population, population density, government spending as a percent of GSP, and the political ideology of the polity as measured by the Berry, Ringquist, Fording, & Hanson (1998) Index.

Table 3 Occupational deaths by industry division (1980–1995)

Industry division	Number of deaths	Death rate per 100,000
Mining	3995	30.4
Agriculture, forestry, and fishing	10,737	19.6
Construction	17,140	15.3
Transportation, Communication, and public utilities	15,604	12.6
Public admin	4343	5.1
Manufacturing	14,034	4.2
Wholesale trade	2741	3.8
Retail trade	8631	2.9
Services	10,056	1.7
Finance, insurance, and real estate	1271	1.1

Source: Marsh and Lane (2001)

communications, and public utilities. And while the manufacturing and service sectors are the largest categories of employment, their death rates are relatively low. I include industrial category composition as a percent of the workforce to control for the effects of these particular categories on occupational fatalities. Mining is also an important control variable, because OSHA does not oversee mining operations. The Mining Safety and Health Administration (MSHA) regulates mining safety issues. Unfortunately, the NTOH does not separate out state fatality date by industry and year. Thus, this variable controls for certain deaths for which state and federal OSHA regulators are not responsible.

Though OSHA mandates occupational safety procedures, other variables may be important in determining the occupational mortality rate. Vector **P** contains three variables to control for private market effects on workplace hazards: union membership, compensating wage differentials, and workers compensation insurance. Unions play a particularly important role in OSHA enforcement. Weil (1991) documents the significant role of unions in facilitating OSHA. In this study of federally administered programs, the author finds union membership to be associated with the frequency and thoroughness of union inspections, which increases the expected penalty of violations to employers. Unions also succeed in inducing greater fines and reduce the likelihood that punishments will be reduced upon appeal. Weil (1996) also finds unions play a significant role in regulating workplace safety. Additionally, unions may convey information about safety to their members, thereby encouraging safety from the worker side. Because this study only focuses on federal OSHA I include a separate variable to proxy the isolate the effects of union membership on state-administered programs. While unions may facilitate enforcement in the centralized program, it is not clear that union membership will have the same effect on state programs, which this study hypothesizes may do a better job than federal regulators. Union membership may be a substitute for state regulation, if state regulation is superior. Hence, I include an interaction term of a dummy variable equal to one where the state regulates OSHA multiplied by union membership.

Viscusi (1992) documents compensating wage premiums for workplace hazards. Workers are well aware of occupational hazards and therefore demand higher wages in return for bearing the risk. In fact, in some instances workers may prefer higher wages to a mandated safety standard. In light of this evidence, I include the income per worker to control for this effect. I expect the death rate to be positively correlated with income. Also, employers face tort penalties for workplace violations in addition to OSHA penalties. If the legal atmosphere of a state is particularly favorable to rewarding injured workers, firms have a greater incentive

to prevent occupational injuries than states more averse to tort claims. I include workers' compensation payments per worker to proxy the expected private costs workplace hazards.[14]

3.2. Results

Table 4 lists the regression results for several specifications. In all of the specifications, state administration is negatively correlated with occupational mortality. However, when union membership in state OSHA states is excluded from the model (Model 2) the state OSHA coefficient is smaller and not statistically significant, which is not surprising. While generally union membership is negatively correlated with the mortality rate across all states, union membership is positively correlated with workplace deaths among state OSHA states. This indicates that unions interact differently with state administrators than federal administrators, which is consistent with the analysis above. To ensure that the results are not the result of some unobserved interaction with the employment share variables, which appear to be unimportant, I include several other specification that exclude some of these variables. The state OSHA variable remains relatively uniform over all of the specifications. At the average level of workplace deaths state OSHA programs are associated with between 27 and 35% fewer deaths than federally administered OSHA states.

Model 1, which includes all of the control variables, estimates the state-enforcement mortality reduction to be 28%. Over the sample the average federal OSHA state employs approximately 2.6 million workers with an average number of 165 occupational deaths per year. Therefore, in the average federally-enforced state, switching to self-enforcement of OSHA standards would save approximately 46 statistical lives a year. Over the 306 state OSHA sample-years included in the study, this translates to 14,076 statistical lives saved over 15 years in state self-enforced OSHA programs. Additionally, if the mortality results stem from reductions in workplace hazards, reductions in injuries and illnesses are likely benefits that are unobserved in this study. Unfortunately, consistent occupational injury and illness data at the state level is not readily available over this time period. This study also finds no evidence any negative consequences or "race to the bottom" effects of interstate competition in terms of workplace safety. Thus, it appears that state OSHA programs do a better job at preventing workplace fatalities than the federal OSHA, which is consistent with the regulatory federalism hypothesis.

Another interesting aspect of this regulatory choice is how long it takes for the implementation strategy of state enforcement to have an effect. It is to be expected that the change in regulatory enforcement does not immediately reduce workplace mortality. In the first few years after the program has been introduced, the gains may be small to non-existent; but as the new regulatory oversight becomes a fixture in the state the regulations ought to become more effective. There also may be a lulling effect after the state OSHA program is up and running for several years, causing it not to be as effective as it once was. It is possible that the new program is effective largely because it is new, which causes regulators, employers, and employees to pay closer attention to workplace safety. If this is the case, once the regulatory system becomes routine, it may lose some of its benefits. To examine the possible timing effects I separated the implementation of the

[14] Though I expect this variable to be negatively related with mortality, higher workers' compensation payments also create moral hazard for workers. Bolduc, Fortin, Labrecque, & Lanoie (2002) find workers' compensation to be associated with more workplace injuries for difficult to diagnose accidents. However, the moral hazard effect should be small in examining accidents with high mortality risks, which is the focus of this analysis.

Table 4 Determinants of the occupational death rate in US states, 1981–1995

	1	2	3	4	5	6
State OSHA regulation	−0.276	−0.061	−0.338	−0.334	−0.273	−0.356
	[2.30]*	[1.06]	[2.63]**	[2.65]**	[2.27]*	[2.77]**
GSP (per capita)	−1.2E-05	−1E-05	−4.2E-06	−4.1E-06	−6.8E-06	−7E-06
	[2.14]*	[1.83]	[0.82]	[0.80]	[1.37]	[1.22]
GSP growth (per capita)	1.001	1.010	0.823	0.799	0.911	0.863
	[3.24]**	[3.26]**	[2.74]**	[2.65]**	[2.97]**	[2.84]**
Total employment	−1.2E-08	−1.3E-08	−3.9E-08	−3.3E-08	−2.3E-08	−3.9E-08
	[0.86]	[0.93]	[2.28]*	[2.04]*	[1.70]	[2.27]*
Manufacturing share	−0.016	−0.017				
	[1.79]	[1.89]				
Construction share	0.034	0.028				0.024
	[1.50]	[1.23]				[1.04]
Transportation share	0.166	0.168			0.198	
	[3.44]**	[3.46]**			[4.63]**	
Agriculture share	18.482	18.569			20.305	
	[2.96]**	[2.95]**			[3.25]**	
Service share	−2.680	−2.734		−2.351		
	[2.35]*	[2.38]*		[2.06]*		
Mining share	6.603	6.376	10.452	9.965	8.785	10.215
	[3.43]**	[3.29]**	[5.56]**	[5.38]**	[4.91]**	[5.43]**
Union workers	−0.009	−0.006	−0.014	−0.013	−0.016	−0.013
	[1.38]	[0.88]	[2.11]*	[1.87]	[2.65]**	[1.85]
Union workers in state	0.013		0.014	0.014	0.012	0.015
OSHA states	[2.05]*		[2.11]*	[2.19]*	[1.89]	[2.25]*
Income (per worker)	−0.005	−0.005	0.003	0.006	−0.004	0.004
	[0.55]	[0.50]	[0.34]	[0.60]	[0.51]	[0.39]
Workers comp.	0.073	0.136	−0.310	−0.008	−0.099	−0.296
	[0.16]	[0.29]	[0.64]	[0.02]	[0.22]	[0.62]
Inverse mills ratio	−0.174	−0.189	−0.348	−0.335	−0.249	−0.342
	[2.41]*	[2.61]**	[4.62]**	[4.62]**	[3.74]**	[4.56]**
Observations	750	750	750	750	750	750
R^2	0.60	0.59	0.43	0.46	0.59	0.42

Absolute value of z-statistics in brackets
* Significant at 5%
** Significant at 1%

regulation into three phases: the first 5 years (Phase 1), the second 5 years (Phase 2), and the time beyond the other phases (Phase 3). I re-estimated Equation (1) replacing variable R with three dummy variables—one for each phase. The coefficient on each phase variable captures the impact of that stage on occupational deaths versus federal regulation in this sample. If either the introductory or lulling effects exist, the impacts of state OSHA programs on occupational mortality ought to be less in these two stages than in the middle phase.

Table 5 reports the estimates for each phase, and it does appear that though the safety effect of state OSHA enforcement persists through all phases, it is strongest in the second 5 years of its implementation. It is not surprising that the full impact of state enforcement is not felt immediately and that the impact does wane some over time. However, though the estimated initial impact is smaller and more variable than the other two periods, it is not that much smaller in magnitude, ranging from a 22 to 32% decline in workplace deaths. The drop-off is minimal in final phase of implementation, with the average reduction in mortality being between 26 and 34% per year.

Table 5 Determinants of the occupational death rate in US states by state OSHA regulatory phase, 1981–1995

	1	2	3	4	5	6
Phase 1	−0.217	−0.016	−0.303	−0.297	−0.219	−0.319
	[1.62]	[0.26]	[2.13]*	[2.12]*	[1.63]	[2.24]*
Phase 2	−0.301	−0.120	−0.371	−0.368	−0.296	−0.390
	[2.40]*	[1.85]	[2.78]**	[2.80]**	[2.35]*	[2.91]**
Phase 3	−0.259	−0.092	−0.319	−0.314	−0.256	−0.339
	[2.15]*	[1.32]	[2.47]*	[2.48]*	[2.12]*	[2.62]**
R^2	0.60	0.59	0.43	0.46	0.59	0.42

Absolute value of z-statistics in brackets
* Significant at 5%
** Significant at 1%
The control variables are the same as in Table 4, and the results for these estimates are available from the author upon request

4. Discussion and Conclusion

Section 18 of the OSH Act gives states the option to regulate workplace safety on its own, or to delegate this responsibility to the federal OSHA. Currently, 21 states fully govern their own occupational health and safety programs. This presents an opportunity to examine the effect of regulatory federalism on the behavior of the different states and federal regulators. Additionally, recent studies by Weil (1996) and Scholz and Gray (1997) highlight the importance of encouraging compliance through cooperation between regulators, firms, and workers as opposed to simply imposing fines. The decentralized nature of state programs may give these states an advantage in preventing workplace accidents over federal regulators. Using a unique panel data set from 1981 to 1995 this study finds states that administer OSHA regulation are associated with fewer occupational fatalities than states that allow federal OSHA to oversee its workplaces, which is consistent with the Tiebout hypothesis and other models of OSHA enforcement. Federally administered OSHA states that want to improve workplace safety ought to consider instigating the state program approval procedure. Additionally, the gains in mortality reductions may indicate a similar trend for injury and illness. Future studies ought to examine differences in regulatory effectiveness in preventing injury and illness in the workplace once the data becomes available.

The results in this paper also suggest the need for further examination of regulatory federalism in other areas. Other regulations may also benefit from decentralized enforcement, such as consumer safety and prescription drug approvals, where citizens, policy-makers, and economists have complained about the quality of federal regulations. Also, this paper merely investigates the safety implications of regulation, not efficiency. Though state programs may save more lives, at what cost do they succeed? States may want to consider cost considerations before implementing such a plan. This is especially important given the current evidence on the efficiency loss from regulation and the negative effects of regulation on growth. A recent study by Besley and Burgess (2004) finds significant economic costs to labor regulations that can hamper economic growth. Future studies ought to examine differences in costs burdens of centralized and decentralized regulatory enforcement.

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Mr. WILSON. This article highlights the good work done by state plans. I would draw your attention to one of the article's conclusions: "The decentralized nature of state programs may give these states an advantage in preventing workplace accidents over federal regulators."

I have seen firsthand the success of VP-8 delegating requirements to state agencies in South Carolina where staff are on the ground and can interpret quickly local needs. The result is a cleaner environment immediately in my home state.

Given this, I hope that today's hearing focuses on how to encourage states to take delegation of safety and health regulations rather than forcing additional federal mandates on the states, mandates that may fail to adequately protect American workers at the end of the day.

Just yesterday, I met with county councilman Jerry Stewart of Buford County, South Carolina, and municipal officials from some of the fastest-growing communities in North America in the low country of South Carolina from Hardeeville, Bluffton and Hilton Head. I assured them I would work to prevent mandates on local government. It is challenging now to plan for the extraordinary growth that they face without new federal programs.

Before I conclude, Chairman Woolsey, I would also like to briefly mention another aspect of this hearing, specifically the preemption of other federal agencies for implementing safety and health plans for workers, also known as the so-called 4(b)(1) exemption.

I know H.R. 2049 attempts to change the longstanding practice of federal preemption. There have been scattered concerns in some industries that health and safety coverage by an agency other than OSHA is inadequate. I will be interested to hear from our witnesses how your proposed legislation would change the existing structure and if, indeed, it would be an improvement.

With that, I look forward to the hearing today. Again, I thank the witnesses for appearing before us today, and I am eager to hear your testimony.

[The prepared statement of Mr. Wilson follows:]

Prepared Statement of Hon. Joe Wilson, Ranking Minority Member, Subcommittee on Workforce Protections

Good morning. I would like to welcome our witnesses today and thank them for their testimonies. I look forward to our discussion.

Before we begin, I believe it's important to provide some context for this morning's hearing. First, we all should recognize that the Occupational Safety and Health Act explicitly allows states to adopt workplace health and safety programs to cover state and municipal employees—a group brought into focus by our hearing today. Likewise, it's important to understand that—under current law—OSHA is able to inspect every worksite only once every 167 years, which—by any reasonable measure—is a clear sign that the agency has difficulty enforcing laws already on the books. In other words, its ability to take on a new layer of responsibilities, as some in Congress are looking to mandate, is questionable, at best. And finally, it can be argued that state and local regulators—not politicians or federal bureaucrats in Washington—are more attuned to the work environments in their unique states and communities.

Taken together, what does all of this mean? At a minimum, I believe it means that any attempts out of Washington to expand OSHA's jurisdiction raises significant questions as to how this expansion will be funded, as well as those of federalism and deference to communities' rights and interests. Furthermore, I believe it means that rather than expanding the jurisdiction of an already overburdened federal OSHA, Congress should be incentivizing states to adopt workplace health

and safety programs of their own instead of forcing unfunded mandates upon them or asking OSHA to extend itself even further.

My home state of South Carolina is what is known as a "state plan state." My state—and 20 others—have submitted comprehensive health and safety plans that meet or exceed federal standards to the Secretary of Labor, who—in turn—verified and approved them. As a result, these states receive 50 percent of their enforcement costs from federal OSHA and—consequently—accept responsibility for regulating the workplace health and safety of both private and public sector employees. In short, the state plan system works well to protect employees—regardless of sector—and should be a key focus as Congress works to enact any reforms to federal health and safety laws.

At this time, I would like to introduce an article for the record entitled, "Regulatory federalism and workplace safety; evidence from OSHA enforcement, 1981-1995." This article highlights the good work done by state plan states. I would draw your attention to one of the article's conclusions, namely: "The decentralized nature of state programs may give these states an advantage in preventing workplace accidents over federal regulators."

Given this, I hope that today's hearing focuses on how to encourage states to take delegation of safety and health regulations, rather than forcing additional federal mandates on states—mandates that may fail to adequately protect American workers at the end of the day. Just yesterday, I met with County council members and municipal officials assuring them I would work to prevent mandates on local governments.

Before I conclude, Chairwoman Woolsey, I'd also like to briefly mention another aspect of this hearing: specifically, the pre-emption of other federal agencies for implementing safety and health plans for workers, also known as the so-called 4(b)(1) exemption. I know H.R. 2049 attempts to change the long-standing practice of federal pre-emption. There have been scattered concerns in some industries that the health and safety coverage by an agency other than OSHA is inadequate, and I will be interested to hear from our witnesses how your proposed legislation would change the existing structure and if—indeed—it would be an improvement.

With that, I look forward to this hearing, and again, I thank the witnesses for appearing before us today. I am eager to hear your testimony.

Chairwoman WOOLSEY. Thank you, Mr. Wilson.

Without objection, I now recognize Representative Rob Andrews of the 1st District of New Jersey, a member of the full Education and Labor Committee and chair of the Subcommittee on Health, Employment, Labor and Pensions, for 5 minutes to make an opening statement.

And, Mr. Andrews, you are welcome to stay for questions if you would like and be part of it.

Mr. ANDREWS. Thank you. Thank you very much, Madam Chairwoman, and I thank you and the ranking member for your courtesy in giving me this opportunity to express my thoughts on the topic on which I care deeply.

I thank you, Madam Chairwoman, for being an aggressive and dynamic chairwoman in the few weeks that you have sat and held the gavel. I think you have done more in a few weeks on these topics than some of your predecessors did in a decade and a half, and I am very grateful to you for your leadership.

This morning, one American got up and went to work on a cement mixer, and the person who lives next door to him got up and went to work on the back of a trash truck working for the town in which they live.

If, God forbid, today there is an accident on the cement mixer, the full power of the OSHA statute would be there to either prevent or protect the worker or deal with the consequences of that accident on the cement mixer. But if there is a looming problem on the trash truck or if, God forbid, there is an accident on the trash

truck, the public worker has no recourse and no protection to speak of. It has virtually none in 26 states.

Now why is it? Why should the law draw a distinction between whether you work on the back of a cement mixer for a private contractor or on the back of a trash truck for the county? I do not think it should make that distinction, and the purpose of the legislation I have introduced and that Ms. Woolsey has been so kind to work with us on is to eliminate that distinction.

Now I have heard three good arguments—or three arguments, I should say—as to why we should continue to have this distinction in the law, that the law should protect the person working on the back of a cement mixer but not on the back of the trash truck.

The first argument is that, well, it will raise taxes by too much and cost local governments too much money to impose this requirement on local governments. I have not seen a shred of evidence that bears out that conclusion in any of the states that have aggressively and proactively protected worker safety, and I would invite any of the panelists who would disagree to tell me why that is not true.

I think the opposite is true. I think that employers that are diligent and careful in protecting their workers spend less money on workers comp claims, on health-care claims, on litigation, on all the other problems that come with workplace injury. I think the evidence is rather compelling—the insurance industry would back this up—that employers who are careful about worker safety are more profitable and more efficient and spend less money than those who do not. I think it is good business to be careful about your workers' health.

Second is the argument that somehow extending OSHA protection to public workers would interfere with state sovereignty. We feel very strongly about state sovereignty and the rights of state governments to make decisions that they view as being in the best interests of their constituents, but I think there are some rights which trump that.

I think there are some basic protections that every American ought to have, whether they live in Nevada or New Jersey, whether they live in California or Florida, and the idea the safety of your workplace is a function of the accident of your ZIP Code makes no sense to me. I think someone's life is equally worth protecting in Nevada as it is in New York or California as it is in Florida, and I think there should be a basic and uniform protection of that.

The third argument I have heard is that, well, there really has not been much of a problem, that this is a bill that is a solution in search of a problem. I wish that were true. I wish that were true.

The last time this Congress paid any serious focus on the issue of extending OSHA protections to public employees was in the early 1990s. Since then, virtually no attention has been paid to this subject and nothing has been done, and since then, 8,600 public workers have lost their lives. Were all preventable? I doubt it. Were some preventable? I am sure. I am sure.

And I think if we had had sufficient protections in states, we would not have had that problem and that situation for so many families.

I also wanted to add a word of personal appreciation to Mrs. Jones for her presence here today. I think that the mark of true character is someone who deals with tragedy not by dwelling on the hurt and the loss, but by moving on to something positive and doing something as a positive response to tragedy, and your statement here today, Mrs. Jones, on behalf of Clyde Anthony Jones and others like him, I think is a measure of your character, and we appreciate it very, very much.

So I understand there are arguments about the taxes and spending and there are arguments about interference with state sovereignty and arguments about the scope of the problem, but I think the record is very clear that employers who are careful about workers' safety spend less money than those who are careless.

I think the record is very clear that there are certain protections that should not be an accident of where you live and should be a function of your standing as an American worker, and I unfortunately think the record is very clear that there is a very significant problem: 8,600 public workers killed since 1992, 520 in 2005 alone.

So I, again, thank the chairwoman and the ranking member for their courtesy and their indulgence. I thank the panelists for being here today, and I would urge this Congress would take expeditious and wise action on this matter.

Thank you, and I yield back.

Chairwoman WOOLSEY. Thank you, Congressman.

Now I am going to introduce our wonderful panel of witnesses starting with Mr. Fillman and going in order that you will present.

David Fillman is the executive director of AFSCME Council 13 in Pennsylvania and is a vice president at AFSCME. He previously worked at the Pennsylvania Department of Transportation and has several years of experience in the areas of worker safety and health. Mr. Fillman is a graduate of Springfield High School in Montgomery, Pennsylvania.

Casey Jones is the brave widow of Clyde Jones, a municipal employee who died in an explosion at the Bethune Wastewater Treatment Plant in Daytona Beach, Florida, in 2006. She is a certified surgical technologist and is a graduate of Daytona Beach Community College.

David Sarvadi is an attorney at Keller and Heckman in Washington, D.C., and represents clients in the areas of occupational health and safety, toxic substance management, pesticide regulation, employment law and product safety. He attended Pennsylvania State University and received a master's in science from the University of Pittsburgh Graduate School of Public Health. Mr. Sarvadi also holds a law degree from George Mason University.

Jon Turnipseed, from my home state of California, is the safety program manager for the City of San Bernardino Municipal Water Department in California. Today, he is testifying on his own behalf as well as on behalf of the American Society of Safety Engineers. He is a professional member of that organization. He has over 30 years of management experience working for large government contractors and local government agencies and is a certified safety professional. Mr. Turnipseed spent 20 years in the United States Air Force and retired as a major. He received his bachelor of business

administration from the University of Iowa and a master's in science from Central Missouri State University.

I welcome all of you.

Before you get started, let's talk about the lighting system. For those of you who have never testified before the committee, let me explain how it all works. We have a 5-minute rule. Everyone, including members, is limited to 5 minutes of presenting and questioning. So the green light is illuminated when you begin to speak, and it is right there in front.

When you see the yellow light, it means you have 1 minute remaining. You probably should start wrapping up. And when you see the red light, it means your time has expired and you need to conclude your testimony. We are not going to cut you off mid-sentence or mid-thought, but just be aware that that is our 5-minute rule. Usually, you will be able to complete some thoughts or some new ideas during the question-and-answer period.

So be sure to turn on your microphones when it is your turn to speak and speak right into the microphone. Otherwise, we will do a lot of gyrations up here and you will just save yourself a lot of heartache.

So we will now hear from Mr. Fillman, our first witness.

STATEMENT OF DAVID FILLMAN, EXECUTIVE DIRECTOR, COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Mr. FILLMAN. Thank you, Chairwoman Woolsey. My name is David Fillman. I am the executive director of Council 13 of the American Federation of State, County and Municipal Employees.

I am honored to represent more than 65,000 public employees in the Commonwealth of Pennsylvania today, and as an international vice president with AFSCME, I speak for more than 1.4 million public employees nationwide who are employed by states and their counties, townships, boroughs, cities, and school districts as well as private and public nonprofit health and human service facilities.

I would like to have my complete statement placed in the record.

Chairwoman WOOLSEY. Without objection.

Mr. FILLMAN. Our membership is extremely diverse and is made up of hardworking members who provide vital public services to the citizens of Pennsylvania in the areas of transportation, health care, public safety, public works, water and wastewater treatment, corrections, and education, just to name a few.

But despite their various backgrounds, our members have two things in common: number one, they confront serious and even life-threatening dangers on the job every day; second, they are not covered by our nation's most basic workplace safety protections required by the Occupational Safety and Health Act, or OSHA.

OSHA was passed in 1970 to provide American workers with safe workplaces, but there was a catch. The law excluded state and local government workers. Today, more than 35 years later, only 21 states have exercised their option to operate their own state OSHA programs. Three other states—New York, Connecticut and New Jersey—have a federally approved plan for their public workers, and responsibility for the private sector falls under the federal OSHA laws.

That means that 26 states do not have a federally approved program in place to cover workplace safety for public employees. That translates to more than 8 million public-sector workers. There are a handful of states, such as Illinois and Wisconsin, which have state laws that provide similar protection to their public workers, but which are not federally approved programs.

In a few minutes, you will hear from Ms. Casey Jones who lost her husband. Mr. Jones' employer was not required to follow OSHA rules that could have prevented his death, and even more tragically, the state law that was enacted in 1982 to assist employers to make their workplaces safe had been repealed by Governor Jeb Bush and the Florida legislature in 1999.

Public employees in the other Gulf Coast states of Louisiana, Alabama, Mississippi, and Texas also work without OSHA protection. That means that public workers who responded to hurricanes Katrina and Rita, men and women who performed heroically, were not entitled to any workplace safety protections whatsoever during the disasters, in their aftermath, or while they continue to rebuild those devastated regions.

I do not have to look any further than where I live to explain what the lack of OSHA protection means. Neither the Commonwealth of Pennsylvania nor local governments are required to follow OSHA standards. For example, workers who must go into a deep trench to repair a water main break do so without their employers having to follow specific procedures or use equipment to prevent the trench from collapsing.

Having OSHA coverage for all public employees is not just an issue of fairness; it is a matter of life and death. With the exception of few occupations, such as law enforcement and firefighters, the general public and their elected officials have little or no idea about the dangers faced by state and local government workers.

A great deal of attention was paid, and rightfully so, to the Sago mine disaster that killed 12 miners. By contrast, public employees are usually killed one at a time and with little, if any, public notice.

According to a U.S. Bureau of Labor Statistics report, from 1992 to 2001, 6,455, workers at the federal, state and local levels lost their lives on the job. About half of these fatalities, 3,227, occurred in local government, while 1,224 state government workers died on the job during this period.

AFSCME members, like other public employees, have died under horrible and gruesome circumstances, such as suffocating in a confined space, being fatally assaulted by patients or by inmates, or developing cancer from exposure to asbestos.

I also want to make you aware of the many workers who have died across the country while maintaining our nation's roads and highways. More than 100 employees of the Commonwealth of Pennsylvania alone, members that I represent here today, lost their lives while working on the state's highways.

Hundreds of thousands of public employees are injured or made ill each year. For some types of hazards, such as workplace violence, public workers are at much higher risk than private-sector employees. According to a 2005 BLS study, 32 percent of all state government workplaces and 15 percent of local governments re-

ported some form of violence within the preceding 12 months of the survey, as compared to only 5 percent for private industry.

In conclusion, I submit to the members of this Committee that our nation's failure to provide the most basic rights to a safe workplace for over 8 million working people—the people who protect and serve the citizens of this nation, even in its darkest hours—is an outrageous injustice.

To correct this injustice, it is imperative that you in this room support prompt and decisive legislative action.

Thank you very much.

[The statement of Mr. Fillman follows:]

Prepared Statement of David Fillman, Executive Director, Council 13, American Federation of State, County and Municipal Employees (AFSCME)

Thank you. My name is David Fillman, and I am the Executive Director of Council 13 of the American Federation of State, County and Municipal Employees. I am honored to represent more than 65,000 public employees in the Commonwealth of Pennsylvania today. And as an International Vice President with AFSCME, I speak for more than 1.4 million public employees nationwide, who are employed by states and their counties, townships, boroughs, cities, and school districts, as well as private and public non-profit health and human service facilities.

Our membership is extremely diverse, and is made up of hard-working members who provide vital public services to the citizens of Pennsylvania, in the areas of transportation, health care, public safety, public works, water and wastewater treatment, corrections, and education, just to name a few.

But despite their various backgrounds, our members have two things in common. Number one, they confront serious and even life-threatening dangers on the job each and every day. Second, they are not covered by our nation's most basic workplace safety protections required by the Occupational Safety and Health Act (OSHAct). Let me repeat the second point because so few people, including too many elected officials at the national, state, and local levels, even realize that millions of public employees across this country are not covered by OSHA.

The Occupational Safety and Health Act was passed in 1970 to provide American workers with safe workplaces. But there was a catch. The law excluded state and local government workers. Today, more than 35 years later, only 21 states have exercised their option to operate their own state OSHA programs. Three other states, New York, Connecticut and New Jersey, have a federally approved plan for their public workers, and responsibility for the private sector falls under the federal OSHA laws.

That means that 26 states do not have a federally approved program in place to cover workplace safety for public employees. That translates to more than 8 million public sector workers. There are a handful of states, such as Illinois and Wisconsin, which have state laws that provide similar protection to their public workers, but which are not federally approved programs.

In a few minutes, you will hear from Mrs. Casey Jones, who lost her husband. Mr. Casey's employer was not required to follow OSHA rules that could have prevented his death. And even more tragically, the state law that was enacted in 1982 to assist employers to make their workplaces safe, had been repealed by Governor Jeb Bush and the Florida legislature in 1999.

Public employees in the other Gulf Coast states of Louisiana, Alabama, Mississippi, and Texas also work without OSHA protection. That means that the public workers who responded to hurricanes Katrina and Rita—men and women who performed selfless acts of heroism—were not entitled to any workplace safety protections whatsoever, during the disasters, in their aftermath, or while they continue to rebuild those devastated regions.

I do not have to look any further than where I live to explain what the lack of OSHA coverage means. Neither the Commonwealth of Pennsylvania nor local governments are required to follow OSHA standards. For example, workers who must go into a deep trench to repair a water main break or for some other reason do so without their employers having to follow specific procedures or use equipment to prevent the trench from collapsing. When public employees perform the same job just across the border to the east in New York or New Jersey, or to the south in Maryland, their public employers are required by their state OSHA laws to take precautions to prevent their workers from being buried alive. This situation is not

fair, and it is not right. Having the right to a safe job should not depend on the state in which public employees work.

Having OSHA coverage for all public employees is not just an issue of fairness; it is a matter of life and death. With the exception of a few occupations such as law enforcement or firefighters, the general public and their elected officials have little or no idea about the dangers faced by state and local government workers. At the beginning of 2006, a great deal of attention was paid, and rightfully so, to the Sago mine disaster that killed 12 miners. By contrast, public employees are usually killed one at a time, and with little, if any, public notice. According to a U.S. Bureau of Labor Statistics (BLS) Report entitled Fatal Occupational Injuries to Government Workers, 1992-2001, 6,455, workers at the federal, state and local levels lost their lives on the job. About half of these fatalities (3,227) occurred in local government, while 1,224 state government workers died on the job during this period. According to the most recent BLS data available, in 2005 another 520 government workers died, of which 107 were state and 300 were local government workers.

The statistics are important to show the scope of the problem, but we must remember that each number is a worker who has died and suffered, and left loved ones behind to cope with the loss. AFSCME members, like other public employees, have died under horrible and gruesome circumstances such as suffocating in a confined space, being fatally assaulted by patients in mental health facilities or by inmates in prisons, or developing cancer from exposure to asbestos. I also want to make you aware of the many workers who have died across the country while maintaining our nation's roads and highways. More than 100 employees of the Commonwealth of Pennsylvania alone, members that I represent here today, lost their lives while working on the state's highways. Highway work is the most dangerous work in the Commonwealth, which I learned as a young employee of PennDOT, the Pennsylvania Department of Transportation.

Public awareness campaigns have helped to make highway work safer by educating drivers to slow down and drive more carefully in work zones. But to this day, no enforceable workplace safety law exists for that highly dangerous occupation—or for the other public service occupations throughout Pennsylvania.

Fatalities are but the tip of the iceberg. Hundreds of thousands of public employees are injured or made ill at work each year. For some types of hazards, such as workplace violence, public employees are at much higher risk than private sector employees. According to a 2005 BLS 2005 study, 32 percent of all state government workplaces and 15 percent of local governments reported some form of violence within the preceding 12 months of the survey, as compared to five percent for private industry.

I came here to describe why OSHA coverage for all public employees is so important. However, before I end my remarks, I also feel compelled to say that we deserve coverage that translates into real safety and health protection for our members, and all other workers in this country. For the past six years, OSHA has failed miserably to meet its mandate to protect workers. Enforcement of OSHA rules has taken a back seat to voluntary compliance and alliances with companies and trade associations. OSHA has failed to issue new and needed standards. It even withdrew its proposed tuberculosis rule, and now public health officials are warning us about a super drug resistant strain of TB that has emerged. OSHA just recently denied AFSCME's petition for an emergency standard for pandemic influenza preparedness, stating they could not take action because no human pandemic influenza virus exists at this time. OSHA should know that the time to prepare for a crisis is before it occurs and compel employers, if necessary, to take action in advance of emergency, not during or after a catastrophe has happened.

Some state OSHA programs have tried to address part of the massive void left by federal OSHA. Within the past couple of years, New York State passed a workplace violence prevention law, Washington State passed a safe patient handling bill, and California issued a standard to protect workers from exposure to heat. Federal OSHA should be addressing these and many other hazards.

In conclusion, I submit to the members of this Committee that our nation's failure to provide the most basic rights to a safe workplace for over 8 million working people—the people who protect and serve the citizens of this nation, even in its darkest hours—is an outrageous injustice.

To correct this injustice it is imperative that you, in this room, support prompt and decisive legislative action. Thank you.

Chairwoman WOOLSEY. Thank you.

Ms. Jones?

STATEMENT OF CASEY JONES, ON BEHALF OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Ms. JONES. Good morning. My name is Casey Jones, and I am from Daytona Beach, Florida. I would like to thank the chairman and members of the subcommittee for inviting me to testify today.

I have a larger statement that I would like to have placed in the record.

Chairwoman WOOLSEY. Without objection.

Ms. JONES. On January 11, 2006, my husband and best friend, Clyde Jones, was taken from me and the children, family, friends and community who loved him. He was only 40 years old.

He went to work one morning for the city that he loved and to a job that he loved. He never came home.

He was instructed by the City of Daytona Beach to repair buildings damaged by the hurricanes of 2004. The roof, which was to be removed, was directly over tanks holding highly flammable and dangerous gases which escaped through venting pipes at the wastewater treatment where he worked.

Clyde was not a roofer. He worked in general maintenance. He had no knowledge of dangers associated with these tanks that he had worked around for the last 7 years because there had never been any safety meetings for him or other workers.

He did not know of the dangerous gases which were escaping. He was never advised such a situation existed, nor were there any warning signs or precautions given to him.

He was instructed to go with the other workers and use lighted torches to begin cutting away the torn metal to start the repair process. My husband was in a crane that was used to lift the metal pieces that were cut away.

As the lighted torch cut through the metal, the gases coming from the vent exploded into a horrible fireball. The tanks and pipes broke, and hot flammable gases were directed into the cab where my husband was severely burned.

He was transported to the hospital where I work. The doctors who knew him cried uncontrollably because of their empathy for the unbearable pain they knew he was in. Clyde was burned over 90 percent of his body with third-degree burns.

He was stabilized at the hospital and then airlifted to Orlando Regional Medical Center 60 miles away to the burn unit. Clyde suffered through a horrible cleaning process that finally showed the severity of his burns.

When Clyde was brought into his room and I had the opportunity to see him once again, I was devastated. I spent several hours with him to comfort him and promised that I would be strong for him and would be there for him through his recovery.

I received a call the next morning from the doctor informing me that Clyde had no chance of recovery and they were keeping him on life support until the family could say their goodbyes.

The city has shown no mercy.

There were no safety meetings in advance. There was no review or written plan as to how to safely proceed that day. The City of Daytona Beach, like so many other governmental agencies, did not have to abide by OSHA standards.

Thus, not having to comply, no one cared enough to voluntarily comply. Daytona Beach did not even have a safety officer on payroll at the time. No one required them to do so. They cut the budget for that position when the law did not make such a position mandatory.

The government that my husband loved and served did nothing, absolutely nothing, to provide him with a safe workplace. They simply ignored responsibility for his safety because they did not have to provide a safe work environment as a city government.

My husband's life was not the only one taken that day. Another co-worker died, and another still suffers with terrible burn injuries.

The state that he also loved ignored our cry for help. A bill was presented to the State House of Representatives in Florida which would have required local governments to meet minimum OSHA safety requirements. The bill never made it to the floor.

The Chemical Safety Board responsible for investigating this tragedy found numerous basic safety issues which were ignored due to the lack of any requirement that the city adhere to such standards. It concluded that had any of these basic safety standards been in place, my husband would be alive today.

You cannot help my husband or others that suffered, but you can help to save lives and the devastation caused by horrific injuries to the future victims and future families. I am only here for that purpose. I am here hoping that my husband's life was not taken in vain.

If you would know the person that Clyde was, you would realize we cannot afford to lose another woman or man like him. He is the backbone of what makes our country work.

Clyde served in the U.S. Army in the Gulf War. At 6 feet and 270 pounds, he was a very big man. He worked hard every day. As big as he was, his heart was even larger. His heart would break even more if he knew that he died senselessly, with no one wanting to prevent something like this from happening again.

My heart breaks as I speak. I know that he did not have to die. My heart breaks for his children. They will never understand why he died. My heart breaks for those that lost families, friends in similar situations all needlessly, all so senselessly.

I am now sitting in front of my leaders of my country. I never dreamed I would sit here at such a place. Only you can help make sure this does not happen to others.

Thank you for the opportunity to speak.

[The statement of Ms. Jones follows:]

Prepared Statement of Casey Jones, on Behalf of the American Federation of State, County and Municipal Employees (AFSCME)

Good Morning. My name is Casey Jones and I am from Daytona Beach, Florida. I would like to thank the Chairman and members of the Subcommittee for inviting me to testify today.

On January 11, 2006, my husband and best friend, Clyde Jones, was taken from me and the children, family, friends and community who loved him. He was only 40 years old. He went to work one morning for the City that he loved to a job that he loved. He never came home.

Clyde put his life on the line for you and me and countless others while on duty with the U.S. Army in the Gulf War. We trusted our lives to him, but the government which he served so proudly did not place his life in their trust in any fashion whatsoever.

He was instructed by the City of Daytona Beach to repair a building damaged by the hurricanes of 2004. The roof, which was to be removed, was directly over tanks holding highly flammable and dangerous gases which escaped through venting pipes at the waste management plant where he worked.

Clyde was not a roofer. He worked in general maintenance. He had no knowledge of the dangers associated with these tanks he worked around every day for the last 7 years, because there had never been any safety meetings for him and other workers. He did not know of the dangerous gases which were escaping because he was never advised such a situation existed, nor were there warning signs or other precautions given to him.

He was instructed to go with other workers and using lighted torches, they began cutting away the torn metal roof to start the repair process. My husband was in a crane which was used to lift the metal pieces as they were cut. As the lighted torch cut through the metal, the gases coming from the vent exploded into a horrible fireball. The tanks and pipes broke and hot flammable gases were directed into the cab of the crane, where my husband was severely burned. He was transported to the hospital where I work. The doctors who knew him cried uncontrollably because of their empathy for the unbearable pain he was in. Clyde was burned over 90 percent of his body with 3rd degree burns. He was stabilized at the hospital and then air-lifted to Orlando Regional Medical Center 60 miles away to the burn unit. Clyde suffered through a detriment cleaning process that finally showed the severity of his burns. When Clyde was brought to his room and I had the opportunity to see him once again I was devastated. I spent several hours with him to comfort him and promised that I would be strong for him and would be there throughout his recovery. I received a call the next morning from the doctor informing me that Clyde had no chance of recovery and they were keeping him on life support until the family could say their goodbyes. The City has shown no mercy.

Every day countless men and women go to work with nothing to protect them from the harm that faces them from doing their jobs as they are instructed. There were no safety meetings in advance of the work that day. There was no review or even a written plan as to how to safely proceed. There was no safety precautions taken such as spark arresting mats or other devices required in private industry to be used whenever lighted torches are part of the work conditions. There were numerous regulations in place through OSHA, and had Clyde been working for private industry, these regulations would have likely saved his life and prevented the explosion from ever occurring. However, none of these regulations or safety considerations were in place because the City of Daytona Beach, like so many other governmental agencies, did not have to abide by OSHA standards. Thus, not having to comply, no one cared enough to voluntarily comply. Daytona Beach did not even have a Safety Officer on payroll at the time, because no one required them to do so. They cut the budget for that position when the law did not make such a position mandatory.

The government that my husband loved and served did nothing, absolutely nothing to provide him with a safe place to work. They simply ignored any responsibility for his safety because they did not have to provide a safe work environment as a city government. When people hear this, the sounds of such words echo with disbelief.

I still cannot believe this could happen in a world wrecked by the lessons of poor preparation and the need to vigilantly protect one another at all costs.

My husband's life was not the only one taken that day. Another co-worker died and another still suffers with terrible burn injuries.

Only you can help. Sadly, cities and other smaller governmental agencies will not take action to save lives unless they are told they must do so. The budget is more important to the city that the people who work for the city.

Only you can help. The state that he loved has also ignored the cry for help. A bill was presented to the State House of Representatives in Florida which would have required local governments to meet minimum OSHA safety requirements. The bill never made it to the floor. The safety of local governmental workers who make up such a large part of the work force is not a priority in the State of Florida at the present time.

Only you can help. The Chemical Safety Board, responsible for investigating this tragedy, found numerous basic safety issues which were ignored due to the lack of any requirement that the City adhere to such standards. It concluded that had any of these basic safety standards been in place my husband would be alive today. They met in a public forum to present their findings. Important members of the community were present. They pleaded for action. None was taken. Only you can help.

You can not help my husband or the others that have suffered but you can help to save lives and the devastation caused by horrific injuries to the future victims

and future families. I am here only for that purpose. I am here, hoping that my husband's life was not taken in vain. If you will listen to my story. If you would only know the person that Clyde Jones was, you would realize that we cannot afford to lose another man or woman like him. He is the backbone of what makes our country work. At over 6 feet and 270 pounds, he was a very big man. He worked hard every day. He carried a lot of people's needs on his broad shoulders. As big as he was, his heart was even larger. His heart would break even more if he knew that he died, senselessly, with no one wanting to prevent something like this from happening again.

My heart breaks as I speak. I know that he did not have to die. My heart breaks for his children. They will never understand why he died. My heart breaks for those that have lost family and friends in similar situations, all so needlessly. All so senseless.

I am now sitting in front of the leaders of my country. I never dreamed I would sit in such a place. I never dreamed I would have the courage to speak these words. I am honored to be here on behalf of my husband and so many others. I pray you will take on the responsibility that others have avoided taking. I thank you from the bottom of my heart for letting me speak today. God bless each one of you.

Only you can help make sure this does not happen to others.

Chairwoman WOOLSEY. Thank you.

Mr. Sarvadi?

STATEMENT OF DAVID G. SARVADI, ATTORNEY, KELLER AND HECKMAN LLP

Mr. SARVADI. Thank you, Madam Chairman. My name is David Sarvadi. I am an attorney and also a certified industrial hygienist, which, to those of you who do not know, is one of the two professions that works on workplace safety, and I have been doing this now for about 35 years.

These kinds of workplace tragedies affect everybody, not just the families and the immediate friends of the victims. I have seen numerous cases where not just the employees, but the managers and the families of those managers, get very, very seriously affected by the emotional trauma that is associated with it, and we certainly should expect our governments to be exemplary, to be models in terms of workplace health and safety.

In regard to the proposal to expand OSHA coverage and to add state and local employees to the coverage under the Occupational Safety and Health Act, regardless of whether we do it with a mandatory requirement or if we leave it to the states to do it on their own, we should expect them to do it with the same degree of earnestness and attention that the private sector does.

I think my experience with state and local government activities and a little bit of the research that I have done on the topic shows that in the states that are not now covered by state plans, a number of them have statutory requirements mandating that their local governments as well as the state governments comply either with general safety and health provisions in the state law or specifically with the Occupational Safety and Health Act and its implementing regulations.

One of the things that is undoubtedly true is that even where we have coverage under the Occupational Safety and Health Act, having that coverage does not guarantee that compliance will occur, and compliance does not guarantee that safety results. My experience with this shows that you can be in compliance with lots of reg-

ulations and still have safety hazards and activities on the job that result in great tragedy.

So let's not lose sight of the fact that while the regulations are important in identifying the kinds of things that generally need to be done to try to prevent safety and health hazards, it is the responsibility of everybody involved, both the managers as well as the employees, to take the steps necessary to protect themselves.

The second issue I wanted to bring to the attention of the committee is the issue of whether or not coverage is going to be allowed. I took a quick look at the Supreme Court decisions on imposition of federal employment mandates on state and local governments, and I think it is fair to say at this point it is not clear how the Supreme Court would end up.

They have gone back and forth about it over the last couples of years, and I think it might be better if we avoided a constitutional issue over this by trying maybe a different approach to encouraging the states to participate.

It is true that the current statute provides some incentive to the states to adopt a comprehensive program and it provides some funding, but it seems to me that perhaps a system of education and grants and other kinds of assistance might move things along in some of the states that have not been as aggressive as perhaps they should be.

I think the other point that I wanted to make is that the preemption issue is one that we really need to keep a focus on and maybe from a little bit different perspective here. One of the things that Congress does when it passes statutes and assigns responsibility to various agencies is that it expects those agencies to develop expertise in particular areas, and so if we have the Federal Aviation Administration responsible for aviation safety, for example, it is unlikely that OSHA is ever going to get the kind of expertise in that area that the FAA has.

So I think it is important to keep in mind that if we are going to deal with preemption, I do not think the proposed language is going to help very much because it is going to put an overlay of having OSHA make a judgment about whether the existing regulation by that other agency is as effective as OSHA standards, and not having the expertise that the other agency has, I am not sure that they are going to be able to make the judgment correctly.

Then having a procedure for appeals and all of the rest of that—we know what is happening with OSHA's current regulatory process and how difficult it is to get regulations through. I do not think adding another layer of bureaucracy is the right way to go on that regard.

And, Madam Chairman, I would like to have the written document that I submitted earlier entered into the record as part of my written statement.

[The statement of Mr. Sarvadi follows:]

Prepared Statement of David G. Sarvadi, Attorney, Keller and Heckman LLP

Good morning. Mr. Chairman, Members of the Committee, and invited guests, thank you for the opportunity to participate in this important proceeding.

My name is David Sarvadi. I am an attorney with the Washington, D.C., law firm of Keller and Heckman LLP, and I am here to comment on H.R. 2049, the Pro-

tecting America's Workers Act. I also have some suggestions to improve the bill. At Keller and Heckman LLP, we represent and assist employers in meeting their obligations under a variety of federal and state laws, as well as international treaties and the laws of Canada, Europe, and many countries of the Far East. In particular, we help clients maintain progressive health and safety programs intended to protect their employees in their workplaces, as well as to comply with national and international health and safety laws and standards. The Occupational Safety and Health Act is the primary focus of our compliance assistance here in the U.S.

I am appearing in this hearing on my own behalf, and any views expressed herein should not be attributed to my firm, my partners, or any other entities, including any of our clients. I am here solely as a person with a long standing interest in the topic of occupational safety and

The two provisions that we are discussing today are the issue of whether the Occupational Safety and Health Act should be amended to modify the definition of the word, employer, to remove the exemption of state entities and their political subdivisions, as well as to extend coverage of the OSH Act to federal employees. The second question is whether the provision in the statute prohibiting the Secretary of Labor (SOL) from regulating workplace conditions where another federal agency has established regulations or standards applicable to those workplaces should be amended to require the Secretary to affirmatively determine that the protection provided is "at least as effective as" that provided by the OSH Act. In both cases, I believe the proposals are misdirected and therefore could be improved. Let me explain why.

In 1968, when Congress was considering the proposal to regulate workplace safety and health at the federal level, there was some attention paid to the question of whether federal agency safety and health programs were up to snuff. Congressional proposals included provisions to make federal programs "models" including comprehensive safety and health programs, adequate, to provide "safe and healthful workplaces and conditions of employment, consistent with the standards set under section 6," and to keep records of occupational injuries and illnesses and to report them to the Secretary. In the end, these provisions were adopted, but there was no provision calling for inspections of federal agencies or for providing for enforcement through some system of penalties. What the proposal would do is, in effect, adopt a penalty system for federal agencies.

I do not believe that this should be necessary. Federal agencies have extensive programs and are required to comply with OSHA regulations by executive order. Having federal agencies paying penalties to the Treasury for OSHA violations would simply reduce the resources available for compliance. It is a non sequitor.

With regard to states and political subdivisions, the Congress recognized limitations on its power to regulate internal state operations, including those related to the relationships between public employees and their state and local government employers. While not mandating compliance with OSHA standards, the legislation required those states that would operate a state plan of OSHA enforcement would have to simultaneously adopt a program of compliance and enforcement for state agencies and their political subdivisions. In doing so, Congress also appropriated money to be paid to those states who would take over the new programs.

Much has been made of the argument that because the OSH Act does not cover states as employers that their employees are not protected. I do not believe that is entirely true. Of the 25 or so states that do not have state plans, a number of them have mandatory compliance requirements enacted under state law, while others require compliance with OSHA standards through executive order.

Two things need to be remembered in deciding the public policy of attempting to impose federal OSHA requirements on the states. The first is that compliance with OSHA standards does not assure safety. Surely, many of OSHA's standards address physical changes in the workplace that prevent employees from being injured, such as machine guards and electrical design standards. But many accidents occur not when normal operations are occurring but during service, maintenance, and other non-routine operations. In those circumstances, the protective devices that are normally used may have to be removed to accomplish the task at hand. I do not believe it is possible to write regulations to address what are essentially infrequent occurrences. So what is necessary is for people to be trained in the kinds of hazards that they encounter on the job, to recognize them, and to take steps to prevent them. In some ways, this is more a problem of education than enforcement. Perhaps the current Administration's approach of outreach and education should be expanded and funding increased to address this perceived deficiency.

Second, it is not clear that Congress has the authority to apply OSHA standards to the states by mandate. The Supreme Court has gone back and forth on the subject of regulation of workplace conditions between states and its employees. The question of the authority of Congress under the Commerce Clause to impose employ-

ment conditions on states has been debated in Supreme Court cases without clear resolution.

Rather than engender a debate over the esoteric constitutional issue, I personally believe that it would be better to have Congress encourage states to comply by tying grants and other funds to state compliance programs. Similarly, it makes little sense to have a scheme in place in which scarce local government resources are used to pay federal penalties with the idea that public employers need a stick to force them into compliance. Most private employers comply with OSHA regulations because they are good citizens. I would hope that Congress believes our state and local governments do not need to be coerced into doing what is right for their employees. Similarly, I do not believe that an enforcement system involving penalties paid to the federal government makes good sense.

Preemption adopted by another agency is at least as effective as compliance with the OSHA provisions at issue. That, in and of itself, does not seem offensive, except that it will impose a requirement on the Agency that will detract from its primary mission. Preemption is intended to preclude overlapping, redundant, or conflicting regulation by different arms of the federal government.

In the proposal by requiring OSHA to review and make a determination that another agency's decisions provide equivalent protection, Congress is suggesting that OSHA has greater expertise on these topics than the agencies charged with their full-time regulation. As the Supreme Court acknowledged in the OSHA case of Martin, Secretary of Labor v. Occupational Safety and Health Review Commission (OSHRC), 59 U.S.L.W. 4197, 111 S. Ct. 1171 (1991) (CF&I Steel), when OSHA develops a standard, it develops an expertise in the subject matter, both in the rulemaking process and in the enforcement context. That expertise entitles OSHA and other regulatory agencies to deference when interpreting the regulations they adopt.

Similarly, if OSHA under the proposed language were to reject the balancing and judgments adopted by the sister agency on a subject about which they are acknowledged to have superior expertise, it would be substituting its lesser informed judgment for that of the agency charged by Congress with implementing the totality of the public policies addressed in the enabling legislation. In other words, the bill would allow OSHA to substitute its judgment over that of a more experienced and knowledgeable government organization.

A few examples might suffice. Under current regulations of the Department of Transportation (DOT) a number of different regulatory programs address public health and safety. Among them are the programs addressing transportation of hazardous materials, safety. One example related to me of an OSHA regulation that reflects a lack of complete understanding of the technology regulated by DOT. Under OSHA regulations, the wheels of trucks that are being serviced by powered industrial trucks like for lifts must be "chocked" to prevent the trucks from rolling away from the dock. Under DOT rules, chocks are not required if the trailer is equipped with "spring brakes" that lock in place when air is removed from the braking system. Having to chock a truck takes time, and it is not clear that it is a necessary improvement from a safety perspective over the brake system DOT has approved. Under the present system, OSHA is theoretically precluded from enforcing its rule. This means a significant savings of time, especially where there are large numbers of trucks moving in and out of a distribution center, and in DOT's judgment without a cost in safety. Whether OSHA's rule improves safety is not clear.

The change in the statute will add another layer of bureaucracy to an already burdened system. Making OSHA perform an affirmative determination, then subjecting it to challenge and judicial review may seem like a good idea from an administrative law perspective, but it implies that the initial determination by OSHA's sister agency is suspect. For employers, it creates greater uncertainty and confusion, which is the opposite of what any changes in the law should seek to achieve. Moreover, it increases complexity in an area that everyone already admits is ponderous and working badly, if at all. That is the rulemaking process.

The current language of section 4(b)(1) is clear enough. The courts have fleshed out the Congressional mandate in a workable way, wherein the agency whose regulation would displace OSHA's must address the hazard OSHA's standard would address. Having done so, it is not a question of efficacy. Properly so, it seems to me, the present arrangement presumes that the enabling statute and the OSH act articulate. In this way, the full intent of Congress is acknowledged and implemented by the agency specifically charged with balancing these competing interests. The Supreme Court in the case of Chevron U.S.A. Inc. v. Echazabal, 122 S.Ct. 2045 (2002) noted that compliance with all laws is mandated, and that agencies are expected to make "the substantive choices that agencies are expected to make when Congress leaves the intersection of competing objectives both imprecisely marked but subject to administrative leeway. * * *" The provision contemplated will put OSHA—with

less experience and knowledge on a topic—in the position of second-guessing the other agencies' decisions. It hardly seems an appropriate and efficient use of limited government resources.

Conclusion

The proposals sound plausible on their surface but the reality is that they distract public attention from important work that remains to be done. Federal employees and those in states with approved state plans are already covered by OSHA requirements, and a number of the remaining states do so by state statute. Having OSHA oversight should be unnecessary and duplicative, and there is no justification for expansion of OSHA jurisdiction where states on their own are following OSHA's rules. The better approach would be for Congress to use its funding power to provide states with the incentive and the wherewithal to upgrade their public employee safety and health programs.

Regarding preemption, the present system is working, and there is nothing to fix. Congress made the correct choice in 1969 when it recognized that some agencies with specific expertise in individual industries or activities are better equipped than OSHA to understand and implement safety programs. The provision would simply increase bureaucracy and inefficiency and is not a proposal designed to lead to better government programs.

Chairwoman WOOLSEY. Without objection.

Mr. Turnipseed?

STATEMENT OF JON TURNIPSEED, SAFETY SUPERVISOR, MUNICIPAL WATER DEPARTMENT

Mr. TURNIPSEED. Chairwoman Woolsey and members of the subcommittee, I am Jon Turnipseed, and I am very pleased to be here today as a certified safety professional representing the 30,000 members of ASSE. That is the American Society of Safety Engineers. They have asked me to speak as strongly as I can in support of providing occupational safety and health coverage for all public-sector workers no matter where they work.

I am a public-sector employee. I am the safety supervisor for the City of San Bernardino Municipal Water Department in Southern California. I see every day how important safety and health coverage is for my fellow workers,

And might I add that what Ms. Jones has gone through is something I work hard to prevent every single day. I am probably the only person in this room that has to worry about that every morning when I walk in, so my heart goes out to Ms. Jones. I know how tough this is.

Most people are shocked to learn that in 26 states, public-sector employees are not guaranteed the same level of workplace health and safety protection that private-sector workers have. They also do not understand the risk that many government workers face on their behalf. I have heard people say and tell me, "Oh, working at the water works or the sewer plant cannot be that dangerous, is it?"

Let me tell you it is. This is why San Bernardino hired me to make sure our workers properly follow OSHA standards.

Water and wastewater workers enter hundreds of underground vaults, trenches, pits several hundred times every year. On any given day, the potential of a lethal atmosphere in a vault or similar confined space or trench collapse can kill them.

On the street level, these same workers also have to direct traffic around their work zones. Water and wastewater treatment depends

on electrical pumps and motors. So, every day, we face electrocution hazards.

Potentially hazardous chemicals, like chlorine, are used throughout our industry. Operating large construction equipment, like earthmovers, backhoes and cranes, is always risky business. Office workers face everything from carpal tunnel injuries to assaults by angry customers.

People fail to realize also that many of these public-sector workers who are without health and safety coverage are the very first responders who rush in during a disaster to save their lives. Water and wastewater people are right in the middle of those disasters, too.

My experience shows only one example of the need for public-sector coverage. People working in hundreds of other jobs within the government arena face similar risks and deserve the same protection they would enjoy if they were private-sector workers, yet more than 8.5 million of these workers remain without occupational safety and health coverage that meets federal OSHA standards.

We do understand the arguments against this: unfunded mandate; "It costs too much"; "We do not need it because we take good care of our public employees." In all honesty, these arguments just are not supportable.

I understand the unfunded mandates as a public employee myself. I also struggle to keep on top of the ever-changing government regulations, yet I accept that my job is to do the best I can to care for the workers and the citizens of San Bernardino, and I do not shirk that task.

As a safety professional, I soundly reject the idea that the cost of safety is just too much. Beyond meeting the moral duty to protect workers' lives, the best corporations in our country know that investing in safety and health pays off in improving the bottom line. No doubt taxpayers would like to know why their governments do not have a better understanding of the safety and health payoff to the bottom line.

The numbers of deaths and injuries among public-sector workers contradicts the idea that they are taken of, and if a government entity's employees are well cared for, it would not cost them more to follow OSHA standards because the investment in meeting those standards would have already been made.

I had this coverage, and I know that the San Bernardino Water Department is no less a good steward of taxpayers' hard-earned dollars than a water department where coverage is not provided. In fact, the recent tragedy in a similar Daytona Beach department discussed here already today speaks volumes against each of these arguments.

ASSE was the Chemical Safety Board's hearing on the accident in Daytona Beach. So were the plaintiffs' lawyers for the victims, and rightfully so. We do know what the tragedy cost in lives. No doubt the cost in taxpayer dollars to Daytona Beach for not meeting the most basic OSHA standards will be much higher than the investment in meeting those standards had they done it properly in the first place.

Now ASSE's Florida members are working to see the Florida legislature provides public-sector coverage. We understand, though,

that the surest way to achieve coverage for every public-sector worker is to amend the federal OSHA Act. ASSE fully supports provisions to do this in your bill, Chairwoman Woolsey.

The time has come to be fair to all public-sector workers who risk their wellbeing for all of us. ASSE stands ready to help. Whatever questions the subcommittee has for me, I would be more than happy to answer.

[The statement of Mr. Turnipseed follows:]

Prepared Statement of Jon Turnipseed, Certified Safety Professional, on Behalf of the American Society of Safety Engineers (ASSE)

Chairwoman Woolsey and Members of the Subcommittee: I am Jon Turnipseed, and I am pleased to be here today representing both my own views as a Certified Safety Professional and the views of the 30,000 members of the American Society of Safety Engineers (ASSE). As a volunteer, I am a member of ASSE's Government Affairs Committee. In my professional capacity, I am a public sector employee serving as the Safety Supervisor for the City of San Bernardino Municipal Water Department in California. Although I work for a municipal government, I am grateful we are subject to inspections and civil penalties for violations of occupational safety and health laws, unlike the estimated 8.5 million other public sector employees across the country who are not. Accompanying me today is Dave Heidorn, ASSE's Manager of Government Affairs and Policy.

ASSE is the oldest and largest society of safety, health and environmental professionals in the world. Founded in 1911, ASSE's dedicated members include Certified Safety Professionals, Certified Industrial Hygienists, Professional Engineers, academicians, fire protection engineers, system safety experts, health professionals and an impressive collection of other disciplines. Our members are experts committed to excellence in the protection of people, property and the environment worldwide. The Society has thirteen practice specialties, including an active Public Sector Practice Specialty with members who have wide ranging expertise and knowledge in managing safety, health and environmental risks in every kind of public sector workplace.

Based on the expertise and knowledge of our members, ASSE has long advocated the need to address the lack of occupational safety and health coverage for state and local government workers that now exists in 26 states and the District of Columbia. With the attention today's hearing brings to the issue, ASSE hopes that the reasons why millions of workers remain without OSHA coverage can quickly be resolved.

Government Workers Are Not Covered by OSHA

Most people are shocked to find out that the workplace safety and health protections put in place by the Occupational Safety and Health Act of 1970 (OSH Act) apply only to private sector workers and not all state and local government employees. Under the OSH Act, states are allowed to run their own state OSHA programs in lieu of federal coverage of the private sector. These approved state OSHA programs must be at least as effective as the federal program and, unlike the federal Occupational Safety and Health Administration (OSHA), are required to cover both the private sector and their own state and local government workers.

Twenty-one states and Puerto Rico have federally approved OSHA programs that cover public employees—Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Three states whose private sector workers are covered by federal OSHA—Connecticut, New Jersey, and New York, along with the Virgin Islands—have federally approved state programs that apply only to state and local government workers.

Therefore, 26 states and the District of Columbia leave their state and local government workers unprotected by any federally approved occupational safety and health laws—Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, and Wisconsin. No pattern or underlying reason explains the lack of coverage. Larger and more populated states like Florida, Illinois and Texas join smaller, less populated states like Delaware, Montana and North Dakota in failing to give their workers the same protections private sector employees have in those states.

These unprotected state and local government workers are the good people who keep our state, county and municipal governments functioning on a daily basis. They run the gamut from workers in high-risk jobs such as law enforcement and fire fighters to workers in low risk office jobs. They are the people who make sure that we all have safe water to drink, battle to keep our aging street infrastructure functional, make sure that our kids have decent parks, and keep our legal system up and running to fight crime. Most people are familiar with the hazards associated with working in high profile jobs such law enforcement and firefighting. The safety and health risks these people take every day to protect us go without saying. What this Subcommittee and the American people need to know are the largely hidden occupational safety and health hazards that many less well-known public sector workers face daily.

In my own job, I make sure California OSHA regulations are followed to protect the people who provide drinking water and wastewater treatment for the city. When I tell people what I do, the typical comment is something like, "Working at the water works and the sewer plant surely can't be that dangerous." On the contrary, the men and women I work with enter hundreds of underground vaults, trenches and pits several hundred times each and every year. On any given day, the potentially lethal atmosphere in a vault and other similar confined spaces as well as the potential for a trench collapse can turn their work deadly. Many of these trench entries are in the middle of heavy-traffic streets and highways, which not only compounds trench stability issues but also poses risks to workers on the street level who must try to control the never-ending flow of traffic.

Water and wastewater treatment requires a huge amount of electrical pumps and motors. Therefore, my colleagues must work with or near thousands of low and high voltage electrocution hazards every day. Chemicals are used throughout various water department operations and many of these constitute potential health hazards if not properly used. Chlorine gas is an essential product for keeping our drinking water safe but, if improperly handled or transported, can quickly become lethal for the workers and nearby citizens. Operating large construction equipment like earthmovers, backhoes, and cranes is another daily task that can become risky if appropriate safety procedures are not followed and enforced. Office staff faces everything from carpal tunnel injuries and other ergonomic hazards to workplace violence from being assaulted by disgruntled customers. In short, people who think that working for a city water department is low risk work that does not need OSHA protections are wrong.

My experience in a municipal water department is only one example of the need for public sector occupational safety and health coverage. People working in hundreds of other job specialties within the state and local government arena face no less dangerous safety, health and environmental risks and deserve the same protections they would enjoy if they were doing these jobs in the private sector.

The Risks to Government Workers

Good reasons support what ASSE hopes will be action by this Subcommittee to protect public sector workers across the United States. From my own view as a public sector employee, the simplest but most compelling reason is that saving lives and preventing injuries always tops the list of values that our government holds dear in every other responsibility it undertakes. State and local government workers are, in many instances, the "first responders" upon whom we all depend. Whether a terrorist attack or a natural disaster, these first responders are the first people who rush in to help save lives. We put a premium on that capability in our society. These same people who protect the public from hazards deserve the no less of a commitment to occupational safety and health protections from their employers, the public, and all of us here today.

Please note that, when I say "first responders," the term encompasses much more than the usual perception of law enforcement and fire fighters. I know from personal experience that water and wastewater people are right there in the middle of most disasters, moving throughout the affected areas to keep the infrastructure up and running. Hurricane Katrina taught many people a valuable lesson that people in my line of work have always known—a city is a miserable place when it is without electrical power and communications system. Cut off the water and waste water systems, and a safe and habitable city no longer exists.

That occupational safety and health risks are a problem for public sector workers is clear. The U. S. Department of Labor's Bureau of Labor Statistics tells us that, from 1992 to 2001, 6,455 employees of government entities at all levels were fatally injured while at work. During that period, the annual number fluctuated from a high of 780 in 1995 to a low of 566 in 1999. Among the three levels of government—federal, state and local—workers in local government, which accounted for 50 per-

cent of all government employment, incurred the highest number (3,227) of occupational fatalities over the period.

Because government workers are employed in a wide variety of occupations, they provide a diverse cross section of workers to examine. Of the 6,455 government employees that were fatally injured on the job from 1992 to 2001, 5,694 (88 percent) were men and the remaining 761 (12 percent) were women. In terms of age, 12 percent of the fatally injured workers were aged 24 years and under, 26 percent were aged 25 to 34, 24 percent were aged 35 to 44, 22 percent were aged 45 to 54, and 16 percent were aged 55 and over. Caucasian workers accounted for 77 percent of all workplace fatalities in government over the 10-year span; they accounted for 73 percent of total workplace fatalities. Black workers accounted for 12 percent of the fatalities in government and 10 percent of overall workplace fatalities. Hispanic workers represented 6 percent of the fatalities in government and 11 percent of overall workplace fatalities.

Approximately half of the fatal occupational injuries to government workers resulted from transportation incidents. The next largest event or exposure category was assaults and violent acts, which accounted for 22 percent of the workplace fatalities in government over the 1992-2001 period. The next most common event or exposure category among government workers was exposure to harmful substances or environments, which accounted for 426 (7 percent) workplace fatalities during the period. Of these, 159 involved contact with electric current, and 139 involved oxygen deficiency. A total of 423 government workers were killed through contact with objects or equipment—most (257) from being struck by an object. Finally, 359 government workers lost their lives in falls, and 270 died in fires and explosions. It must be noted that these totals do not include the many public sector fatalities that resulted from the terrorist attacks of September 11, 2001. The public sector is subject to the same difficult questions facing private industry about underreported deaths from work-related illnesses that are not recorded. Many occupational exposures to chemicals and toxic substances, such as crystalline silica and asbestos, result in illnesses with a long latency period. The correlation between workplace exposure and death is often missed when the worker succumbs fifteen or more years after leaving the workforce.

What is not available are complete data comparing the injury and illness and fatality rates of states whose public sector workers have safety and health coverage and states not requiring such coverage. ASSE has undertaken its own review of what we believe is incomplete data and would be happy to share what we have found with Subcommittee staff. However, the need for a more comprehensive understanding of the problem is needed. ASSE urges this Subcommittee to task OSHA and BLS to work together to devise a way to develop this data and share it with the Subcommittee as quickly as possible.

From my own experience and the experience of my fellow safety and health professionals, rates should be lower in states that have established health and safety requirements and OSHA oversight than rates in states where no one takes responsibility for workplace safety, as is found in the private sector in comparisons between companies who are committed to safety and health and those that are not. Although the data may not be clear, we know for sure that hundreds of state and local government workers are killed and thousands injured each year. Because private industry widely accepts that workplace health and safety programs do prevent or mitigate the effects of workplace hazard exposures, it is difficult to understand why so many state and local governments do not better protect their workers with OSHA coverage.

An Unfunded Mandate?

In the early 1990s, the labor movement attempted several revisions of the OSH Act. One of these revisions would have provided the coverage for all public employees that we seek today. At that time, reportedly, the League of Cities, the Conference of Mayors and the Association of State Legislators opposed coverage. The primary objections were that such a requirement would be an "unfunded mandate," that it would "cost too much," or that "we don't need it because we take good care of our public employees." These are not supportable positions

I can appreciate the sentiment behind the unfunded mandate argument. As a supervisor, I likewise struggle each year to keep on top of ever-changing regulatory requirements from various levels of government. Yet, as a professional with a moral commitment to protecting the citizens of San Bernardino, I also accept that part of my job is to stay current and help see we do our best to take care of our citizens and our employees with whatever limitations there are on resources. I do not shirk my duty.

As a safety professional, I reject that safety costs too much. Most importantly, not spending money to protect state and local government worker's health and safety sends a message that such workers are expendable, that it is cheaper to kill or injure employees than to protect them. As the best working corporations across this country have found, investment in managing safety, health and environmental risks pays in more productive employees, fewer accidents, less injuries and deaths in workers that can only take from a company's bottom line. Although not the direct subject of this hearing, the benefits of investing in safety and health can be found on ASSE's Business of Safety Committee's website at *http://www.asse.org/search.php?varSearch=business+of+safety,* ASSE's white paper, "Return on Investment for Safety, Health and Environmental Programs" at *http://www.asse.org/search.php?varSearch=return+on+investment,* and the safety and health topics page on OSHA's website, "Making the Business Case for Safety and Health" developed by OSHA, ASSE and other Alliance participant leaders in safety and health at *http://www.osha.gov/dcsp/products/topics/businesscase/index.html.* No doubt, taxpayers would like to know why their governments do not have the same concern over bottom line issues that private sector employers widely accept.

As to the argument that government employers already take good care of their employees without a mandate, the contradiction is obvious. The numbers of deaths alone among public sector workers contradict this statement. If a government entity's employees are well cared for, it could not cost more to follow OSHA standards because an entity would already be making the commitment required by those standards. I receive this coverage, and I do not believe the San Bernardino Municipal Water Department is any less a good steward of taxpayer's hard-earned dollars than water departments where coverage is not provided.

In fact, a recent tragedy in a municipal water department in Florida, where OSHA coverage is not mandated, provided a telling demonstration of why providing such coverage is both a moral and an economic imperative. On January 11, 2006, an explosion at the City of Daytona Beach's Bethune Waste Water Treatment Plant killed two municipal employees and gravely injured a third. In 2000, Florida had stopped requiring state entities to provide safety and health coverage, giving public sector employers the choice to provide such coverage voluntarily. Six years later, Daytona Beach did not have a commonly found "hotwork" permit system used by OSHA to control cutting and welding operations. The city also did not have a hazard communication plan to train workers on the hazards of the flammable chemicals they were told to work above. When sparks from their cutting torches ignited the flammable liquid tank, two of the workers burnt to death and the third was critically injured.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) investigated and found that the tragedy was preventable if the city had been required to follow the same OSHA standards as private industry. ASSE shares the conclusion CSB Chairman and CEO Carolyn W. Merritt captured when she said, "Workers in private industry benefit from a variety of OSHA standards designed to prevent death and injury, and public sector employees deserve no less." CSB's completed investigation report is at *http://www.chemsafety.gov/index.cfm?folder=completed—investigations&page=info&INV—ID=57.* Now, ASSE members in Florida are engaged in an effort to see to it that Florida public sector workers do receive occupational safety and health coverage. Due to their work, we fully expect a bill to be introduced in next year's legislature that would reverse the state's policy that such coverage need only be voluntary.

ASSE's members understand, though, that the surest way to achieve coverage for Florida's workers and every one of the 8.5 million public sector workers who do not have such coverage is an amendment to the federal OSH Act. ASSE fully supports provisions in the bills introduced this year by you, Chairwoman Woolsey (HR 2049) and Senator Kennedy (SB 1244) that would do just that. Until coverage is made federal law, however, ASSE's members will continue to work for solutions at the state level, as our members are already doing in Florida.

Conclusion

ASSE greatly appreciates this opportunity to share our views today. Since 1970, a missing section in the OSH Act has lessened the well being of 8.5 million public sector workers who are not protected from occupational safety and health risks as private sector workers are. The time has come to be fair to all those public sector workers who risk their well being for all of us. The 30,000 members of ASSE stand ready to help this Subcommittee achieve that fairness.

Whatever questions the Subcommittee has for me, I would be more than happy to answer.

Chairwoman WOOLSEY. Thank you very much to all four of you.

I will begin the questioning with you, Mr. Sarvadi.

I know you think it is better that rather than amend OSHA that states be given incentives to comply with OSHA standards, but I ask you: The federal government has already provided matching funds of their very own for OSHA-approved programs, and after 37 years, only 21 states have OSHA-approved state plans, and only three states have plans cover public employees only.

What are we going to do with the other 26 states? Why do you think good faith works when it doesn't? What would you do if you were in our shoes?

Mr. SARVADI. Well, let me clarify a couple of points, Madam Chairman, about the matching funds that OSHA provides. Those matching funds go to support the enforcement programs that those 21 states operate. That covers private-sector employees as well. So the money that is available in those funds is for operation of the state program similar to OSHA's funding.

What I am talking about in terms of additional funding that would encourage the other states to participate would be the kinds of grants that would go to pay for the kinds of programs that the water department in San Bernardino has and that the City of Daytona obviously needs.

Chairwoman WOOLSEY. Well, let me reclaim my time to ask then, Mr. Turnipseed, why are you able to follow OSHA standards in San Bernardino? That is part of your job. Why can you do that?

Mr. TURNIPSEED. Obviously, you know, my city, my water department is committed to following OSHA—in this case, CAL-OSHA standards. We are a state program state. They are very committed to making sure that our public-sector workers know what to do, the right way to do it, and we do not have tragedies like Ms. Jones has just gone through.

Chairwoman WOOLSEY. Tell me what you think after reviewing the report on the Daytona Beach's safety program. Explain how this explosion could have been prevented. I mean, you have read it.

Mr. TURNIPSEED. Yes.

Chairwoman WOOLSEY. Your association has made a report on it. Would you tell us about that?

Mr. TURNIPSEED. The tragedy for me is there are two very, very basic OSHA programs that were totally neglected here. If they are not training their folks—and we call it hazard communication—on the chemicals and the substances you work with, that is a very basic thing that everybody needs to know. Everybody has a right to know. In fact, it is known as the Right to Know law.

Hot work permits—how you deal with welding and cutting and brazing, anything that generates a spark—that is a very basic simple thing that we all know and we all follow. By following those very simple basic things, this tragedy would have been totally preventable.

Chairwoman WOOLSEY. Thank you.

Ms. Jones, to your knowledge, did your husband's employer take any steps to investigate the incident and report to you, the family, the cause?

Ms. JONES. When the explosion first happened, they were all right there wanting to help, wanting to find out things, why this happened, what can we do better. The day of his funeral, I had the city commissioner tell me that "whatever we could do to change this, we will."

Nothing has been changed except they hired a safety officer in the City of Daytona Beach. As far as I know, the city has not told me nothing else besides why, how. It just seems like they keep pointing fingers behind each other.

Chairwoman WOOLSEY. So, without the report of the Chemical Safety Board, would you have known any of the facts about how it happened?

Ms. JONES. No.

Chairwoman WOOLSEY. Okay. Thank you.

Mr. Fillman, when OSHA was passed 37 years ago giving the states the option of covering state, county and municipal employees, why do you think only half of the states became involved in it and what would the obstacles be for a state to offer to be part of OSHA?

Mr. FILLMAN. I can only talk about my experience in Pennsylvania, and in Pennsylvania, for the last 20 years, we have tried to submit on 10 different occasions a bill to give OSHA protection to public employees. It really has not gone far because the opponents of it always raise the issues of unfunded mandates, staffing that would have to be accomplished, which really is not the intent of OSHA-type bills at all.

So we have not been successful in Pennsylvania, and I think the opposite is true that if an OSHA-type bill was in place for public employees in Pennsylvania, not only would the possibility of some of the deaths that we have, especially in the highway work, have been prevented, but a lot of lost wages, lost time, disability pensions, those kinds of things would have been averted.

Chairwoman WOOLSEY. Thank you very much.

Mr. Wilson?

Mr. WILSON. Thank you, Madam Chairman.

And thank all of you for being here today.

Particularly, Ms. Jones, thank you for being here. Your courage is a tribute to your husband, and so it is just been very meaningful to have you here. Thank you.

Mr. Turnipseed, I am delighted to see you. My youngest son is studying engineering, so I appreciate your profession.

In your testimony, you indicated that in 1994 when this issue came up to cover state and municipal employees that organizations, such as the League of Cities, the Conference of Mayors and the Association of State Legislators, opposed the coverage. Do you know if they have changed their position?

Mr. TURNIPSEED. I honestly do not know what their current position is.

Mr. WILSON. And at that time, it was largely due to the issue of unfunded mandates.

Additionally, in your testimony, you suggest that states who have adopted their own programs have a better safety and health record than those of federal OSHA states. From that, would it seem that the best answer is for the states to take the programs? What

measures and incentives do you think we could provide that could promote delegation, if any?

Mr. TURNIPSEED. Certainly. I believe the state program states are the best. Obviously, you know, when you know your local issues better than anybody else, you do a little bit better job. That just goes without saying.

We need OSHA, though, in those states that do not have anything. Right now, those folks are out just running blind in the minefield, and that is ridiculous in this day and age. As far as encouraging other folks to have state plans, all I can say is money always helps everything. If we can increase the money for state plan states, giving OSHA more money to help in those areas would always be a good thing to have.

Mr. WILSON. Indeed, I have seen that with EPA delegating to the Department of Health and Environmental Control in our state that it has enhanced the environment.

Then I have worked with the Corps of Engineers to delegate to state agencies permittings because locally people know, and it is quite a burden to have to contact a regional office in Atlanta or, heaven forbid, Washington, D.C.

People do not even know how to pronounce different communities. It may be Buford in South Carolina and Beaufort in North Carolina, and by the time the bureaucrat figures which it is, they have lost track of which state they are talking with. So I really would like it to be municipal and state.

Mr. Sarvadi, you have testified very well. With your extensive career, and as an attorney, I appreciate your background. By imposing federal standards and inspectors on to the states, will that ensure employee safety?

Mr. SARVADI. Well, I think I answered that but maybe a bit indirectly in my statement, Mr. Wilson.

Mr. WILSON. It does not guarantee it, right.

Mr. SARVADI. It does not guarantee it, and certainly, taking steps to implement a safety and health program is going to improve the chances of not having these kinds of tragedies.

I think the point that was made by Mr. Andrews first and maybe some of the others in their opening statements about the benefits to a workers compensation program that comes from having the safety and health program, certainly the money that they save there could go towards supporting some of these programs.

But the way the legislation presently is written, if OSHA were to have authority and started to go in and inspect the City of Daytona or another agency outside of the state plan states, then OSHA would have the same enforcement authority—that is penalty authority—that presently it has with regard to private-sector employers, and I just do not see the utility of having a state government agency or a local government agency taking money out of its budget that would better be used to improve the safety and health programs in those states and pay it to the federal Treasury, and that is what the present arrangement would suggest.

I do not see how that improves safety and health in any way. So I really think, especially with this administration's program, in the voluntary protection program and other cooperative programs that OSHA has developed, we have seen dramatic improvements in

those industries that are participating in those. I think it is time for us to start seriously thinking about another approach besides a hammer, maybe a few more carrots on the table, to get those states that are not in the programs now to do so in the future.

Mr. WILSON. In line with that theory of the carrot, my state's own safety plan would be more productive and efficient for employee safety than the federal OSHA mandates, and how might states without plans be encouraged, as you were just implying, to implement their own safety plans for state and local government employees?

Mr. SARVADI. I think that one way to approach this would be to target the grants that OSHA would be authorized to pay out and maybe OSHA is not the best place to do this. Maybe it should be through the National Institute for Occupational Safety and Health. I have not given any thought to the mechanism.

But if those grants were targeted to specific activities—for example, to pay for a safety and health manager at a city or local level, to help pay for training to be made available to the state and city employees—you accomplish the same end, and you do it in a way that does not interfere with the states' abilities to manage their program.

Mr. WILSON. Thank you very much.

Chairwoman WOOLSEY. Mr. Bishop from New York?

Mr. BISHOP. Thank you, Madam Chairman. Thank you for holding this hearing.

And thanks to the panel, particularly Ms. Jones. Thank you very much for being here.

Mr. Sarvadi, do you consider the imposition of a national OSHA standard on the states that right now do not follow such a standard to be a violation of state sovereignty?

Mr. SARVADI. Personally, I am a little bit uncomfortable with having the federal government dealing at that level in the relations between the state and its employees, but, as I said in my opening remarks, the Supreme Court seems to be two-minded about this.

In every case that is directly addressed, for example, under the Americans With Disabilities Act or the Fair Labor Standards Act, both of those decisions that I looked at were 5-4 decisions, so it is not clear that constitutionally we have that.

Mr. BISHOP. So it would——

Mr. SARVADI. Personally, I think, I expect my state and local government officials to do the right thing, and the right thing is to have a safety and health program.

Mr. BISHOP. I think we would all agree in an ideal world that that would be the case, but, I mean, the record is replete with examples where the federal government has imposed a national standard.

We have a national standard for handicapped access. We have a national standard for how students with special needs are to be treated. We have a national standard for what educational expectations would be for K through 12 students. Under current law, the president has the authority to deploy the National Guard in each state as he sees fits.

How do you see this issue not rising to the same level of importance as those issues, such that one would reasonably argue that we do not need a national standard?

Mr. SARVADI. I do not think it is correct to say that we do not have a national standard. In the 26 or 27 states and territories that have state plans, they are following the federal standards. In a number of the other non-state plan states, they have state mandates to follow the federal standards—not their own standards, the federal standards.

I will admit because of the shortness of the time that I had to prepare for the hearing, I was not able to go out and look at all of the states, and I would encourage this committee to ask the Congressional Research Service to find out exactly what——

Mr. BISHOP. Let me just go to a specific case. It is my understanding that Florida had a non-federally approved standard, which then-Governor Bush abolished in 2000. In the absence of a national standard, a governor is free to do that, under current law, as I understand it.

Using the construct that you are proposing, which is some system of carrots as opposed to sticks, how do you see that working to incentivize a Governor Bush or others who are likeminded to follow a federal standard and not to, in effect, voluntarily withdraw from the system?

Mr. SARVADI. I am glad you asked me about Florida because I want to set the record straight, if I can. Again, I did not have a lot of time to look at this, but I did look specifically at Florida.

The Florida legislature repealed the statutory requirement. Subsequent to that, I believe it was Governor Bush who issued an executive order requiring state and local governments to comply with federal OSHA standards, and I believe that is the case in Florida today.

So the issue in Florida is an interesting one in light of the accidents that occurred and it is interesting to me to pass the question perhaps to the City of Daytona officials about why they have not complied with that executive order. That executive order approach is the one, in fact, that we use at the federal level.

Mr. BISHOP. If I may use that as a segue to Ms. Jones, again, thank you very much for being here. Are you aware of any official actions taken by the City of Daytona Beach to prevent tragedies such as the type that took your husband or any other formal response to that tragedy on the part of the City of Daytona Beach?

Ms. JONES. The only formal response that I can recall that the city has announced that they have done since the accident in 2006 is to hire a safety manager to oversee any kind of work to be done, to follow guidelines, and the only reason I even found that out is they came out in the papers.

You know, it is kind of funny. They eliminated the position years ago, but within 3 months of my husband passing away, they have a safety officer they could not afford just the year or 2 before, but they found it in the budget now since then to keep this position.

Mr. BISHOP. Thank you very much.

And just to clarify, Mr. Sarvadi, the executive order signed by Governor Bush applied to state employees only. It did not apply to city or other municipal employees.

Mr. SARVADI. As I said, I did not have a lot of time to get ready for this.

Mr. BISHOP. Thank you. Thank you very much.

Thank you, Madam Chairwoman.

Chairwoman WOOLSEY. Thank you.

Ms. Shea-Porter?

Ms. SHEA-PORTER. Thank you very much.

I have some concerns, if I could address those, please. What I am disturbed about, Mr. Sarvadi, is the way you are acting as if we can count on private industry and we can also count on governments to just do the right thing because they are good citizens.

The reason that we have courts is because we do not always do the right thing. So I have trouble with your basic premise there that we just leave it up to them because they will do the right thing.

And we have Ms. Jones sitting next to you, and I offer my deepest sympathies. It is a tragedy that was not necessary because the right thing was not done.

So I wanted to ask you a question about—and you also pointed out that it does not guarantee compliance, and so I guess you get right back to: Do you believe in seat belts? Putting seat belts in cars does not guarantee compliance, and compliance does not guarantee safety, but we know it sure helps a lot. We have seen the change in numbers when people started using seatbelts.

So I cannot quite understand where you are coming from. I know you have a certain set philosophy, but can you address what I just brought up in terms of: Do we have to have some set of protections for these employees and their families?

Mr. SARVADI. Well, let me address, if I can, the point that you made about voluntary compliance, which is sort of a misnomer because there is nothing voluntary about complying with OSHA for the private sector, and in those states that have state laws, there is nothing voluntary about that either.

But we do rely in this country not only in the occupational safety and health area, but in other areas like the Internal Revenue Service on the good citizens of the country to do the right thing.

I think our experience with the IRS—and with OSHA, for that matter, with the Occupational Safety and Health Act—is that, for the most part, our citizens do the right thing. So the question is: What is the best way to get the rest of them up to speed?

It seems to me that the notion that if we pass this requirement and bring these states into the federal plan that magically things will change and, all of a sudden, they will be doing all the things that we think they should be doing, that does not happen. Our experience in the private sector shows that we do have people that do not do the right thing, and of course, that is why we have courts and why we have enforcement.

But I do not think the American people—and I certainly personally would be opposed to the notion of having an OSHA inspector on every workplace. That is not going to work. We are never going to pay for that kind of response, and, in fact, it would not really make any difference.

The OSHA inspectors are good people, and they do work hard, but, in fact, they cannot be everywhere every minute, and these kinds of things sometimes occur randomly without expectations.

So the best we can hope to is to educate not only the employees but the managers about the importance of these things and about the ways to prevent injuries and illnesses from happening and then to learn from the experience of the past and make sure that we do the things differently in the future, so they never happen again.

Ms. SHEA-PORTER. Well, first of all, I hate to bring you bad news, but when the IRS started cutting down the number of compliance officers, the rate of compliance dropped. So it certainly does help to have somebody watching.

When I was reading your testimony, you wrote that the idea that public employees need a stick to force them into compliance—you said it makes little sense, and that most private employers comply with OSHA regulations because they are good citizens.

Now I could agree with you that most people are good people, but we should not each time let somebody like Ms. Jones and her family suffer so that we can "learn" the next time to prevent the next accident.

I do think it is our responsibility to prevent accidents instead of trying to learn from them, and I have not heard anything else offered besides the idea that you have to have people on the job who are the eyes and the ears for our public workers.

I just have not heard anything different today, but I thank you for your comments.

Chairwoman WOOLSEY. Mr. Hare?

Mr. HARE. Thank you, Madam Chair, for holding the hearing.

Mr. Sarvadi, let me ask you, in the years that you have been doing all of this, how many safety and health inspections have you done in public employee workplaces where OSHA standards did not apply?

Mr. SARVADI. How many I have personally done?

Mr. HARE. Yes. Have you ever done any like at a public work yard or a wastewater treatment plant?

Mr. SARVADI. Well, while I was in law school, I was a consultant for a company that had contracts with Prince William County, the D.C. government, and there may have been some other government agencies for asbestos inspections. So that is the kind of thing that we did.

I am not sure that those were voluntary. There was a lot of public pressure from families to look into asbestos in the schools, and there were some statutory provisions, but——

Mr. HARE. Well——

Mr. SARVADI. I do not do inspections. Mr. Hare, I do not do inspections per se anymore. I have not done them for about 20 years.

Mr. HARE. Well, let me ask you this. If you had a choice, Mr. Sarvadi, would you rather go into a trench or to a confined space where there were OSHA standards and you had work or where there were not OSHA standards?

Mr. SARVADI. The point, I think, is that it is not the OSHA standard that makes any difference. Part of OSHA adopting the confined spaces standard——

Mr. HARE. No, I am saying to you would you rather go someplace where there is a standard, or would you rather go to work someplace where there is no standard whatsoever?

Mr. SARVADI. I worked at a company that had standards before the federal government had them, before the federal government imposed them, and my point is that the standards are not uniquely effective because they are federal standards. They are effective because they address the technical issues that occur.

The point to be made is that people need to do these things, and states and local governments need to do them just as much as the private sector or even Congress in its offices need to do these things. We all have a responsibility. I just do not think that the proposed legislation with this mandate for penalties on state and local government necessarily is the best way to go about it.

Mr. HARE. Well, in your statement, you said, "I do not believe it is possible to write regulations to address what are essentially infrequent occurrences." In your 35 years of practicing as an industrial hygienist in occupational safety, have you ever heard of the OSHA lockout-tagout standard?

Mr. SARVADI. Of course. We had that standard in place before OSHA adopted it many years ago.

Mr. HARE. After the incident that killed Mrs. Jones' husband, would you refer to that as an infrequent occurrence and could that have been prevented had basic OSHA standards been followed?

Mr. SARVADI. I think the incident could have been prevented and training provided to the employees that would have helped them recognize the hazards, but, as I read the CSB report, I believe the way the accident occurred was that the welding sparks fell into the vent, and the vent had a flame arrestor that had been corroded and degraded, and it was that combination of things that occurred that actually led to the fire and the explosion.

That is the kind of technical analysis that you get into. Would a lockout-tagout program have prevented that particular incident? I do not believe so because it was not a question of having uncontrolled energy present. It was a problem of having the vent open to the atmosphere, and the lockout-tagout standard I do not believe would have applied in that particular situation.

Mr. HARE. Well, it seems to me that when people go to work every day—and, Ms. Jones, I am sure when your husband got up and went to work every day—people have, I think, a right to assume that they are going to someplace that is reasonably safe and where there are some standards to keep them safe.

What I do not understand is the reluctance, quite frankly, to expand this to a group of people who need the protection. I mean, it would seem to me, if we are going to allow the good will of folks to determine this—as my colleague has already mentioned, you know, they have seat belts in cars. You know, we have speed limits. It does not mean that people always obey them, but the fact of the matter is I do not know why we cannot seem to err on the side of the worker and give them the protection that they need.

I do not think federal grants, with all due respect, to get cities to comply is the answer here. I think that those types of accidents, infrequent as they are, they are tragic.

Listen, if we do nothing, if we do nothing except say, "Well, we want the states, you know, to be good citizens and try this and we will not get any pressure from the feds to try to get them to live up to their end of the bargain," I think that is really disrespectful to the workers, to get up every day and for their families that depend on them to come home at night.

So, with that, I yield back.

Chairwoman WOOLSEY. Mr. Payne?

Mr. PAYNE. Thank you very much, and let me thank you for calling this very important hearing.

We have been very active in New Jersey with OSHA. We had a leader from the IUE years ago, Archer Cole, who used to have an annual funeral, and a number of people who died from occupational hazards and accidents would have a funeral to commemorate the lives of those persons.

So, as you know, we are one of the three states—just Connecticut, New York and New Jersey—that have a public employee only plan, which really establishes the public employee only where the state government enforces safety and health protection for the public sector, and the federal government covers the private sector. But we really take the whole question of occupational safety and health in New Jersey very, very seriously.

Let me just ask you, Mr. Fillman, the OSHA law gave the states the option of covering state, county and municipal employees 37 years ago, yet less than one-half of the states have stepped up to the plate. What are some of the obstacles you have faced in Pennsylvania attempting to get OSHA coverage for public employees and, in your opinion, do other states face the similar obstacles?

Mr. FILLMAN. As I stated before, I can speak for Pennsylvania, and I do not think the obstacles that were outlined when we proposed—that we have proposed 10 times in the last 20 years—the opponents of that type of bill are any different than any state, and that is the unfunded mandates.

It is the misnomer of added staffing, the misconception that buildings would have to be torn down because they are not safe any longer, a whole realm of mistruths, if you will, that are brought—and staggering numbers that are attached to those—and that is really the idea behind the defeat of that bill on most occasions.

Mr. PAYNE. Could you give me one reason that has been given for not providing OSHA coverage for all public employees? One of the reasons that we hear is that it would bankrupt the states and counties, and so what do you think about this, and do you, in fact, believe that covering public employees by a federal OSHA plan would save states money, and if so, how?

Mr. FILLMAN. Yes, definitely. We feel that the loss of time, the workers compensation claims, disability, pensions if it is a more severe injury, the replacement of a worker if a worker is out, the training that goes with replacing that worker, the lost wages, if I have not said that already, all of those things would be cost factors that would be alleviated if we had less accidents, more safeguards in place and ultimately less deaths in the Commonwealth of Pennsylvania and, I am sure, for the rest of the states.

Mr. PAYNE. Finally, could you spend a little time telling us about some of the workplace accidents that have taken place in Pennsylvania that, in your opinion, may have been prevented if public employees were covered by OSHA?

Mr. FILLMAN. We have the most significant and dangerous work and sometimes it is not really represented, is the highway. We have lost over 100 members, 100 employees of the Commonwealth of Pennsylvania since 1970 that have died on the highways.

We have tried to piecemeal some protections when it comes to highway work with construction work safety zones, increasing fines, as best as we can, but unless the standards are in place as far as working on the highways and giving the employees the benefit of having a standard and safeguards in place, there would have been less than those 100 deaths.

We have had incidents in the custodial area dealing with chemical safety, a mismix of chemicals without any standards in place.

I just had heard of an incident at one of our universities where without an OSHA standard or an OSHA compliance officer, there was a question as far as an electrical panel box over what is known as a slop sink in the custodial work area where our member had to actually, through the network in the union, find out someone that knew about electrical compliance and standards to find out if the area was safe. And it was an unsafe area, but the employer was not in the position of helping enforce that compliance.

So, at times, we are battling it ourselves without any real standard or compliance officer that could help.

Mr. PAYNE. Thank you very much.

Chairwoman WOOLSEY. Well, thank you all.

Oh, wait a minute. I forgot. Mr. Andrews from New Jersey?

Mr. ANDREWS. Thank you, Madam Chairman.

I thank the witnesses for their testimony.

I thank you again for the courtesy of the privilege of participating in the hearing.

Mr. Sarvadi, let me say from the outset I appreciate your testimony. I do not agree with your conclusion that we are asked to encourage states and localities to cover public workers is the right idea.

But let's say for a minute that it became the law and let's say that we offer these more generous grants and 20 states say, "No, we are not interested in these grants. We just do not think it is a very good idea, and we are not going to offer standards comparable to OSHA or OSHA standards to cover public employees."

What should we do?

Mr. SARVADI. Find out if those people had a recent psychiatric examination because I do not think states ever turn down money from the federal government.

Mr. ANDREWS. Oh, I do not think that is true. Oh, I do not think that is true at all. The federal government offers abstinence education money, but states believe that is an intrusion on their curriculum and do not do so. We offer money in exchange for meeting certain enhanced clean water and clean air standards and people turn it down because they do not want to do so.

I think you have to assume that because the amount of money here would be relatively modest that there would be people who

would turn this down. So what do we do when someone turns this down? What should we do then?

Mr. SARVADI. I think we better wait and see what happens.

Mr. ANDREWS. Well——

Mr. SARVADI. I do not agree with you that the states will turn the money down, and depending on how much it is, it depends on what you are going to ask them to do. If the money is available for them to fund specific positions in the state government to address these things, it seems to me most of the states, if not all of them, will take that money. The problem is——

Mr. ANDREWS. Have you surveyed the states to ask them this, or how do you know this?

Mr. SARVADI. I do not think anybody has asked the states what they would do under those circumstances because I think this is the first time that we have had this conversation.

Mr. ANDREWS. Well, your testimony implies that you believe that the present incentives that are offered to pay for state employees who inspect private employers are insufficient. By what measure are they insufficient because there is an incentive system in place, right?

Mr. SARVADI. I am not sure I understand the question.

Mr. ANDREWS. You testified earlier that the present OSHA grants and incentives pay states to help them hire personnel to inspect private employers, but that does not extend to state employees, right?

Mr. SARVADI. No, it does not extend. These are the state plan states. In those states, the money that is given to them goes to operate the state OSHA plan which does cover the public employees in those states.

Mr. ANDREWS. But you must think that because everybody has not done that, that that offer is insufficient to get everybody to jump on board this financial gravy train, right?

Mr. SARVADI. Well, remember what I said. The money is not going to pay for safety managers in the different state agencies. The money goes to the state enforcement agency to enforce it.

Mr. ANDREWS. I see.

Mr. SARVADI. What I am suggesting is that the money should be made available to pay for the safety program itself.

Mr. ANDREWS. So we should pay the salaries of state employees to manage their own safety programs in cities and states out of the federal Treasury. Is that what you think?

Mr. SARVADI. I am suggesting that if you want to give them an incentive to adopt——

Mr. ANDREWS. Wow.

Mr. SARVADI [continuing]. Programs like the ones that are mandated in the state plan states, that that is one approach that could be taken.

Mr. ANDREWS. Why should we stop there? Why should not we pay them to hire their division of taxation employees to do a better job collecting taxes? Why should not we pay them to have their environmental employees do a better job inspecting federal environmental laws? Why stop with just OSHA then?

Mr. SARVADI. I think we actually do pay state employees through grants from EPA where EPA contracts with the state to do——

Mr. ANDREWS. We pay them a very tiny percentage of the payroll of people who do that. Very, very tiny.

Mr. SARVADI. I would guess you probably would know.

Mr. ANDREWS. Let me ask you another question. If we had a situation where states are subject to the OSHA rules, your testimony is you do not think penalties for the federal Treasury are an effective means of encouraging compliance.

What is then? If someone is required to do something and if they do not do it they are not fined or penalized, what is an effective means of making people comply?

Mr. SARVADI. Well, it seems to me if we were talking about state and local governments, simply the fact that having it become publicly known that they are out of compliance would be an incentive for the political authorities in those jurisdictions to reorient the career employees to do so.

Beyond that, I have not given a lot of thought to it at this point.

Mr. ANDREWS. What would you think if the fines were put into a fund that was dedicated to deal with the medical costs of injured workers?

Mr. SARVADI. I guess that is what the workers compensation system already does.

Mr. ANDREWS. But wouldn't it be a good idea to supplement that system to pay for injuries caused by careless practices by states? Isn't that an effective fine?

Mr. SARVADI. Anything that you can do to help the victims of these incidents is very important.

Mr. ANDREWS. I take that as a yes?

Mr. SARVADI. I would like to think about the implications of it before we agree unequivocally.

Mr. ANDREWS. Okay. I am sure the chair would invite you to supplement the record with that.

Thank you very much. I appreciate it.

Chairwoman WOOLSEY. Thank you.

Thank all of you for being here.

Thank you, Casey, Mrs. Jones, for testifying.

Ms. JONES. Thank you.

Chairwoman WOOLSEY. All of our hearts go out to you and to your family. I do not know if you know how important your coming here today was to all of us because your story puts a human face to the issue so that we can remember how important it is that we have OSHA coverage, that it is not a luxury, it is not a matter of dollars and cents, it is actually a matter of life and death, and it is an absolute necessity.

The numbers reinforce the necessity. In 2005, the Bureau of Labor Statistics reported that there were over 400 work-related fatalities among state, county and municipal workers, and these numbers do not even take into account those public employees who died as a result of workplace-related diseases.

In addition, there are hundreds of thousands of workers who are injured or become ill each year. In fact, in 2005, there were 570,000 reported incidents of injury and illness among public workers.

However, reported incidents do not tell the full story because this data is taken from the 26 states representing less than 60 percent of public workers in this country. We do not have the data for the

rest of them. So actual numbers of injury and illness, of course, are much much higher.

And, most importantly, the injury and illness numbers show that public employees are much more likely to be hurt on the job than private-sector employees covered by OSHA.

In addition, although it is not the subject of this particular hearing, there are millions of other workers, including air traffic controllers, flight attendants, rail workers and other transportation workers. who receive inferior workplace safety and health protections from federal agencies other than OSHA. They need to be covered by OSHA as well.

Earlier this spring, Senator Kennedy and I introduced the Protecting America's Workers Act, which would not only mandate that OSHA cover all public employees, but it would increase penalties and make it much easier to send people to jail who kill their employees. It enhances the protections of the Whistleblower Act, and it gives more rights to families.

Representative Andrews has a similar bill which requires OSHA to cover public employees as well.

This hearing has once again pointed out this urgent need for OSHA coverage of state, county and municipal workers. As chair of this subcommittee, I will work very hard to accomplish that very goal.

I thank you all for coming here today.

The meeting is adjourned.

As previously ordered, members will have 7 days to submit additional materials for the hearing record. Any members who wish to submit follow-up questions in writing to the witnesses should coordinate with the majority staff within 7 days.

Now, without objection, the hearing is adjourned. Thank you very much.

[Letter from Associated Builders and Contractors, Inc., submitted by Mr. Wilson, follows:]

May 23, 2007

The Honorable Lynn Woolsey
Chairwoman
Education and Labor Subcommittee on Workforce Protections
United States House of Representatives
Washington, DC 20515

The Honorable Joe Wilson
Ranking Member
Education and Labor Subcommittee on Workforce Protections
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Woolsey and Ranking Member Wilson:

On behalf of Associated Builders and Contractors (ABC) and its more than 24,000 merit shop construction and construction-related member firms across the country, I am writing to express our concerns with Section 102 of H.R. 2049, the "Protecting America's Workers Act," introduced by Chairwoman Lynn Woolsey. We expect this section of the bill to be a major point of discussion in tomorrow's Workforce Protection Subcommittee hearing titled *"Workplace Safety: Why do Millions of Workers Remain Without OSHA Coverage?"*

Although purportedly intended to expand Occupational Safety and Health Act (OSH Act) coverage to flight attendants, Section 102 of H.R. 2049 would go well beyond this, and would effectively give the Occupational Safety and Health Administration (OSHA) virtually unlimited authority to seize safety and health regulatory jurisdiction from any Federal agency. This expanded authority would be triggered under the proposed provision by a simple determination by OSHA that an agency's regulations aren't as "effective" as the protection provided by the OSH Act.

This expansion of OSHA's authority would therefore make it highly likely that OSHA would be able to summarily claim jurisdictional authority over subject areas within the construction industry that are currently regulated by other federal agencies, and subject employers to regulatory duties without due process or the need to resort to prior rulemaking. This would be accomplished by the application of the OSH Act's "General Duty Clause."

While the expansion of OSHA's authority to cover flight attendants may be appropriate, that could easily be accomplished through statutory language that clearly states that and only that. However, there has been no evidence put forth that demonstrates there is a need for the expansion of OSHA's authority in the manner being proposed in H.R 2049.

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The proposed expansion, therefore, is not only a radical shift in jurisdictional power from other federal agencies to OSHA, it is also in our opinion unnecessary and unwise.

Sincerely,

William B. Spencer

William B. Spencer
Vice President, Government Affairs

CC: Chairman George Miller
Ranking Member Howard P. "Buck" McKeon
Members of the Subcommittee

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]

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