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FOUR REASONS WHY CONGRESS SHOULD REPEAL DAVIS-BACON

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The Davis-Bacon Act was enacted during the Depression explicitly to prevent low-skilled nonunion workers—chiefly blacks and Hispanics—from competing for federally funded construction jobs. Unfortunately for these workers, it has succeeded.

Congress once again is considering repeal of the Davis-Bacon Act. And thanks to the shift in power in Congress, this year's budget process offers a real opportunity to end this Depression-era law that protects racial discrimination in the construction industry, needlessly costs taxpayers billions of dollars each year, stifles productivity, and subsidizes special interests. If the facts were the only issue, there would be no need for debate—the Davis-Bacon Act would have been repealed long ago. However, this effort may be undermined once more by intense pressure from special interests seeking to preserve generous subsidies at the expense of taxpayers and minority workers. Congress must withstand this pressure, act in the interests of all American taxpayers, and repeal the Davis-Bacon Act.

The Davis-Bacon Act was adopted in 1931 when the United States was mired in the Great Depression and Congress was under a great deal of pressure to protect wages and jobs. The Act was intended to protect local unionized contractors from outside nonunionized contractors using lower cost itinerant labor, typically black workers from the South and immigrants. Davis-Bacon accomplished this by requiring contractors to pay local "prevailing" wages—as defined by the U.S. Department of Labor—to workers on federally funded construction projects valued at more than $2,000. Where union wage rates and benefits are specified as prevailing in a particular locality, nonunion firms and workers lose an important cost advantage in bidding for federally funded construction contracts. Further, the Department of Labor's implementing regulations continue to impose rigid craft-based job classifications and restrictive apprenticeship regulations that inflate costs by reducing productivity and sharply limit an employer's ability to hire or train unskilled minority workers.

FOUR REASONS WHY CONGRESS MUST REPEAL DAVIS-BACON

Reason #1: Davis-Bacon was enacted out of fear and racism and continues to penalize minorities.

A review of the *Congressional Record* reveals clearly that passage of Davis-Bacon was motivated by fear that blacks and immigrants were taking jobs from native-born white Americans. Ever since its adoption, Davis-Bacon has led to discrimination against minorities in the construction industry. In 1932, one year after enactment, only 30 of the 4,100 workers employed on the Boulder Dam project were black Americans. In 1962, two years before the landmark Civil Rights Act was passed, local construction unions

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in Washington, D.C., prevented black electricians from working on one of the capital's premiere building projects: the Rayburn House Office Building.[1]

Even after 30 years of federally required reverse discrimination and minority set-asides, Davis-Bacon continues to keep minorities out of the construction industry. In 1994, black workers accounted for 10.4 percent of total employment but only 6.4 percent of construction industry jobs.

Davis-Bacon restricts the potential for minority-owned firms to compete for federal construction contracts. Nona Brazier, a minority co-owner of Seattle-based Brazier Construction Company, explains that to win Davis-Bacon contracts, firms not only must pay inflated wages and adopt inefficient work practices, but also must expose themselves to heavy compliance costs, threats of litigation, and union harassment.[2] Well-capitalized companies can afford union wages, but their unions historically have excluded blacks. Black businesses—often not as well capitalized—are less able to pay Davis-Bacon prevailing wage rates. Few minority-owned firms win Davis-Bacon contracts, and many give up trying.

On May 8, 1995, the U.S. District Court for the District of Columbia denied a Department of Justice motion to dismiss a constitutional challenge to the Davis-Bacon Act. The suit charges that Davis-Bacon would not have passed Congress if not for racial discrimination and that it continues to discriminate and deny economic opportunity today. In allowing the case to move forward, Judge William B. Bryant agreed that the case has merits that require a hearing.

Reason #2: Davis-Bacon costs taxpayers at least $1.5 billion each year through inflated construction costs.

The Congressional Budget Office (CBO) has estimated that Davis-Bacon costs the American taxpayers at least $1.5 billion per year. This is primarily because the prevailing wage determinations made by the Department of Labor do not reflect market wages. In Oakland, California, carpenters get about $28.00 an hour on federally funded projects; the pay in private construction is about $15 per hour.[3]

The CBO estimates that repealing Davis-Bacon would save American taxpayers $2.7 billion to $5.3 billion from 1996 to 2000.[4] These funds could be used for such things as reducing the federal deficit or increasing the number of construction projects. Repealing Davis-Bacon also would reduce significantly the construction costs for state and local government projects that involve matching federal funds.

Reason #3: Davis-Bacon imposes unnecessary regulatory burdens and heavy paperwork requirements.

By requiring strict assignment of workers and payroll reporting on a craft-by-craft basis, Davis-Bacon impedes normal industry practices that improve productivity and efficiency. For example, Davis-Bacon regulations frustrate the practice of working across craft lines and discourage the use of semi-skilled helpers by requiring that all workers be paid journeymen's wages.[5] This raises the cost of federally funded construction projects.

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1 Scott Hodge, "Davis-Bacon: Racist Then, Racist Now," *The Wall Street Journal*, June 25, 1990.

2 Nona M. Brazier, "Stop Law That Hurts My Minority Business," *The Wall Street Journal*, January 12, 1994.

3 Eugene H. Methvin, "A Scandalous Law That's Costing Taxpayers Billions," *Reader's Digest*, December 1994.

4 The higher $5.3 billion is based on current law and Department of Labor (DOL) regulations that do not allow the implementation of prevailing wages for helpers. The lower CBO estimate is based on the assumption that DOL will reinstate suspended helper regulations (58 F.R. 58954) once congressional prohibition expires this year.

5 Since 1982, the building and construction trades unions and their allies in Congress have blocked a new rule that would have allowed the DOL to issue wage determinations for the job classification of helper. Although DOL changed its regulations to reflect the excepted practice of using helpers on construction projects, in October 1993, Labor Secretary Robert B. Reich officially suspended implementation of the helper regulations.

Repealing Davis-Bacon and the related Copeland Act[6] would free up an estimated five million labor hours per year that contractors now must spend completing weekly payroll requirements that Department of Labor bureaucrats admit they ignore.[7] This is the equivalent of 2,400 full-time, year-round workers that could be doing something more productive. The cost of complying with these paperwork burdens is not borne by the contractor, but is passed on to the taxpayer as part of the project cost.

Reason #4: Davis-Bacon needlessly and unfairly subsidizes unions.

The 1931 Davis-Bacon Act predated virtually all of today's basic worker protections, so its work protection provisions are unnecessary or obsolete. Today, minimum wage laws and overtime provisions prevent the exploitation of workers. Construction safety standards protect worker health and safety. State licensing requirements and building codes ensure quality construction by qualified workers. Further, the government now has an elaborate procurement process that screens out unscrupulous and incompetent contractors.

While the rest of the country pays competitively determined wages for high quality construction projects,[8] Davis-Bacon requires that taxpayers pay more for federally funded construction projects. There is no reason for government to subsidize the wages of construction workers earning an average of $27,500. Without Davis-Bacon, construction workers still would be earning on average more than $26,000.

The only significant groups that actively support retention of Davis-Bacon in its present form are the building and construction trade unions and their allies in the Congress and the Clinton Administration. But Congress should be looking out for the interests of taxpayers and all workers, not just those who gain from a restrictive law.

CONCLUSION

Repealing Davis-Bacon would:

- ✓ **Remove** a major impediment to unskilled minority workers entering the construction industry and minority firms competing for contracts.
- ✓ **Allow** federal, state, and local construction dollars to go farther because costs would be lower and productivity higher. Taxpayers would get more for their money.
- ✓ **Allow** free markets, not bureaucrats, to determine wages on federally funded construction projects.

If Davis-Bacon were not already law it would never be passed today. Proponents of such a law would be denounced as supporting discrimination. It would be pointed out that worker-protection provisions in the legislation are unnecessary because they exist in other statutes. And lawmakers would object to the heavy, unnecessary budget costs imposed by the legislation.

Unfortunately, the legislation is already on the books. It is time to remove it.

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6 The Copeland Act, passed in 1934, requires employers to make weekly reports of wage rates paid, hours worked, earnings, and deductions for each employee working on a project covered by Davis-Bacon.

7 By comparison the public spends 3.2 million hours filling out all of the forms for all BLS surveys. Both of these paperwork burden estimates are from the Department of Labor.

8 Every year around 75 percent of all construction is privately funded and not subject to DOL's prevailing wage rates. Some 25 percent is publicly funded, and the Congressional Budget Office estimates that at least 40 percent of this is covered by Davis-Bacon.