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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

WARREN GUNNELS, MAJORITY STAFF DIRECTOR
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October 5, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

I write to oppose the Occupational Safety and Health Administration's (OSHA) proposed regulation entitled Worker Walkaround Representative Designation Process, Docket No. OSHA-2023-0008.

The Occupational Safety and Health Act (OSH Act) grants both the employer and the employees the right to select representatives to accompany OSHA inspectors during an inspection of the workplace. At issue is whether the employee representative must also be an employee; and, if employees are permitted to designate a third-party representative, whether that representative must offer expertise relevant to the inspection. The current regulation is clear that the employee representative must also be an employee of that employer *unless the OSHA inspector determines good cause for a third party to be present to conduct an effective examination of the workplace*. The regulation provides as examples industrial hygienists and safety engineers whose expertise would be helpful.¹

OSHA proposes two revisions of the regulation at issue. First, the regulation would be amended to make clear that employees may designate a third party as a representative. Second, OSHA would clarify that the third party may accompany the inspector if "good cause has been shown why their participation is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (*e.g.*, because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills)." ² The reference to industrial hygienists and safety engineers as examples of potentially helpful third parties would be deleted. From a practical standpoint, this would pose no limit on whom employees might select as their representative, including a union organizer.

Adopting the rule as proposed would give labor unions an organizing opportunity during OSHA inspections, even if the union organizer is not an employee of the business. Using OSHA to

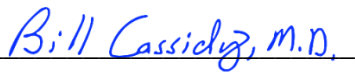
¹ 29 CFR 1903.8(c).

² Proposed 29 CFR 1903.8(c), 88 FR 59833-34 (August 30, 2023).

assist with union organizing inappropriately politicizes worker safety and health. Allowing the union official to participate in an inspection suggests to workers that the union has government support, eliminating the neutrality government inspectors are supposed to have. The presence of a union organizer, especially in a non-union workplace, could very well cause an employer to deny OSHA access. OSHA would then have to seek a warrant from a district court. Such a delay, solely as a result of assisting unions in organizing, is detrimental to worker safety and health.

OSHA's mission is to ensure workplace and worker safety. This proposed rule promotes the Biden administration's agenda of promoting unionization at the expense of OSHA's vital mission. America's workers deserve better from the Department of Labor.

Sincerely,


Bill Cassidy, M.D.
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions