

January 29, 2018

The Honorable Bob Goodlatte Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler, Jr. Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: Groups Strongly Oppose H.R. 3808, the Infrastructure Expansion Act of 2017.

The undersigned organizations are writing in opposition to H.R. 3808, the Infrastructure Expansion Act of 2017, which would prohibit states from establishing strict liability standards for certain construction accidents. This bill would be an unprecedented intrusion into state liability law. Its scope is vast, covering any such “project for which Federal financial assistance is used, directly or indirectly.” These terms are undefined and vague, but a common sense reading suggests they are meant to cover far more worksites than just those receiving federal grants.

Construction is one of the most dangerous jobs in the nation. Currently, states like New York insist on strict liability for contractors and owners when it comes to sites covered by this bill, that is, those “with an elevation or gravity related risk occurring on that project.” This is because New York has determined that those controlling safety at a construction site should be exclusively responsible for ensuring safety and limiting hazards. New York has done this to protect not only workers from unsafe scaffolding, ladders, flooring, elevators and other hazards, but also pedestrians walking on sidewalks and streets where there is active construction.

But even in New York, an accident alone does not establish liability. A defendant cannot be held liable unless they have violated a required safety standard. They cannot be held liable if an accident was solely caused by the worker’s negligence (i.e., being intoxicated at work, etc.). In other words, New York has carefully developed its law over decades, balancing interests to both encourage safety and provide proper remedies for those who have been hurt.

H.R. 3808 directly tramples on a state’s right to decide what’s best for its workers and residents regarding the responsibility of local contractors and building owners to ensure safe construction sites. It would overturn traditional state common law and interfere with a state’s right to establish tort remedies, one of the most basic and traditional of state functions. Please oppose this harmful legislation. (For more information, please contact

Joanne Doroshow, Center for Justice & Democracy at New York Law School,
joanned@centerjd.org. Thank you.

Sincerely,

AFL-CIO
Alliance for Justice
American Association for Justice
Asbestos Disease Awareness Organization
Center for Justice & Democracy
Connecticut Council on Occupational Safety and Health (ConnectiCOSH)
Consumers for Auto Reliability and Safety
Earthjustice
Farmworker Association of Florida, Inc.
Homeowners Against Deficient Dwellings
Impact Fund
International Association of Heat and Frost Insulators and Allied Workers
International Brotherhood of Boilermakers
International Federation of Professional & Technical Engineers (IFPTE)
International Union of Operating Engineers
Maryland Latino Farmers & Ranchers Trade Association
Metal Trades Department, AFL-CIO
National Association of Consumer Advocates
National Congress of Black Women, Inc.
National Consumers League
National Employment Law Project
National Employment Lawyers Association/New York
National Federation of Federal Employees
National Latino Farmers & Ranchers Trade Association
New York State AFL-CIO
New York Public Interest Research Group (NYPIRG)
Progressive Congress Action Fund
Public Citizen
Public Justice Center
SC Appleseed Legal Justice Center
Texas Watch
United Association of Plumbers, Pipefitters, Welders and Service Techs
Woodstock Institute
Workplace Fairness