

*The Davis-Bacon Act:
A Response to the CATO
Institute's Attack*



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"So what is the opposition [to Davis-Bacon] about today? It is to help these fly-by-night operators operating on the basis of greed against responsible construction work."

***Rep. Augustus Hawkins (D-Calif.)
May 3, 1988***

"One of the myths about the Davis-Bacon Act is that it only protects highly paid workers."

***Rep. Bill Clay (D-Mo.)
May 3, 1988***

"By protections flowing from the Davis-Bacon Act in part, [the] lot [of minorities] has been improved dramatically and an otherwise casual labor system has been partially stabilized in many areas."

***Dr. John T. Dunlop
July 15, 1982***

I. INTRODUCTION

The Cato Institute has recently launched a broadside attack on the Davis-Bacon Act under the guise of advancing the interests of minority construction workers. The Cato Institute contends that Davis-Bacon was a "Jim Crow" law enacted to exclude black workers from federal construction projects, and that Davis-Bacon repeal in 1993 will improve the economic opportunities of minorities. Both arguments are utterly without merit.

To support its contention regarding the intent behind Davis-Bacon, the Cato Institute engages in blatant distortion of the Act's legislative history and the entire historical record surrounding the law. The Cato Institute's contentions regarding the effects of Davis-Bacon are grounded in racist assumptions about the worth of minority construction workers, along with a willful disregard for the nature and realities of the construction industry today.

As we will show in Section II, a fair reading of the legislative history of the Davis-Bacon Act negates any claim that the purpose of the Act was to exclude minority workers. In Section III, we will lay bare the Cato Institute's claim that the Davis-Bacon Act reduces minority employment for what it is - a Trojan Horse for unfair contractors seeking to lower the wages and benefits of construction workers. We will further show that the Act benefits minority construction workers by protecting their wages and benefits from being driven down by vicious wage competition, and by providing the underpinning for the apprenticeship programs that are the route through which minority workers have been gaining access to high-skilled, high-paying construction jobs for two decades.

In Section IV, we will show that the so-called "helper" reform of the Davis-Bacon Act espoused by the Cato Institute will relegate minority workers to low wage, dead-end jobs in the construction industry. And, finally, we will describe the conclusions of leading construction industry economists, such as Dr. John Dunlop, that the Davis-Bacon Act does not add to Federal budgetary outlays for construction.

II. THE DAVIS-BACON ACT WAS ENACTED TO PROTECT ALL WORKERS AND TO DISCRIMINATE AGAINST NONE

As opponents of the Davis-Bacon Act have tried to do for the last fifteen years, the Cato Institute claims that the law was passed in order to discriminate against minorities in the construction industry. However, anyone who has actually read the Act's legislative history knows that racial discrimination was in no way a purpose of the law. In attempting to show otherwise, the Cato Institute has manipulated and misrepresented the historical record surrounding the Act.

A. The First Prevailing Wage Laws

The Cato Institute's misrepresentations start with its version of the purported origins of the Act. It claims that "the story of Davis-Bacon begins . . . in 1927" with the construction of a Veterans' Bureau hospital in the district of Representative Robert Bacon (R-N.Y.). That assertion is simply wrong. The idea of protecting and stabilizing local labor conditions on construction projects was already well-established before Rep. Bacon introduced federal prevailing wage legislation. By the time Congress considered national solutions, no less than seven states had already passed prevailing wage laws to bring stability to their construction industry.¹ Four other states, as well as the federal government, had enacted statutes giving preference to local contractors and manufacturers² and at least two other states statutorily gave preference to state residents in hiring workers for state construction projects.³ Indeed, as early as 1891, the state of Kansas had adopted a law requiring that "not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workman, mechanics, and other persons so employed by or on behalf of the State of Kansas."⁴

Thus, in 1927, Rep. Bacon did not originate the notion that a contractor should be forbidden from destabilizing and degrading local labor standards. Rather, Rep. Bacon's legislation was an outgrowth of efforts across the nation to stabilize local wage rates and protect local contractors.⁵

B. The Original Davis-Bacon Act Did Not Have a Discriminatory Purpose

To support its claim that the purpose of the Davis-Bacon Act was to exclude black workers, the Cato Institute cites only a few phrases, taken completely out-of-context from the voluminous hearings and debates on Davis-Bacon between 1927 and 1935. Significantly, none of the remarks cited by the Cato Institute are by the law's sponsors, and are thus of no value in interpreting the purpose of the Act.⁶ In fact, there is absolutely no support in the legislative history of the Act for the Cato Institute's charge that exclusion of African-Americans from federal projects was a "goal of the sponsors." And the handful of remarks that the Cato Institute cites are selectively manipulated to grossly distort the legislative record.

For example, the Cato Institute relies on the remark made by Rep. Upshaw (D-Ga.) in 1927 when Rep. Bacon discussed the previously mentioned Veterans' Bureau hospital in his district. Rep. Upshaw said to Rep. Bacon, "You will not think that a southern man is more than human if he smiles over the fact of your reaction to that real problem you are confronted with in any community with a superabundance or large aggregation of negro labor."⁷ The Cato Institute fails to note that Rep. Upshaw was a lame-duck at the time he made that remark, having been defeated in his bid for renomination in 1926, and that he left office almost four years before the Davis-Bacon Act was passed.⁸ Thus, Rep. Upshaw was no supporter of the Davis-Bacon Act and, moreover, he was not even a member of Congress when it was debated and passed.

Even more importantly, the Cato Institute conspicuously fails to mention that Rep. Upshaw's racist insinuations were immediately and soundly rejected by Rep. Bacon, the sponsor of the Davis-Bacon Act. Stating that migratory workers of all races were being brought in to work on the hospital, and replying that the race of the out-of-state workers was of no import, Rep. Bacon responded to Rep. Upshaw:

MR. BACON. I just merely mention that fact because that was the fact in this particular case, but the same thing would be true if you should bring in a lot of Mexican laborers or if you brought in any nonunion laborers from any other State . . . In the case that I cite the contractor has also brought in skilled nonunion labor from the South to do this work, some of them negroes and some of them white, but all of them are being paid very much less than the wage scale prevailing in New York State⁹

Thus, the Cato Institute tries to paint Rep. Bacon as a racist by quoting the remarks of Rep. Upshaw, and leaving out the response of Rep. Bacon. In so doing, the Cato Institute has engaged in a purposeful distortion of the legislative history of the Davis-Bacon Act. When one reviews the overall history of the Act, as opposed to the isolated and out-of-context remarks cited by the Cato Institute, it becomes absolutely clear that the Cato Institute has misrepresented the purpose of the law.

C. The Purpose of the Davis-Bacon Act Was to Protect Workers of All Races

The true purpose of the Davis-Bacon Act was, in fact, to "give local labor and the local contractor a fair opportunity" to participate in federal construction projects.¹⁰ The roots of Davis-Bacon are solidly in the Republican Party and northern - not southern "Jim Crow" - support, including the support of contractors. Rep. Bacon, a banker from New York, first introduced a bill in 1927 to require that local prevailing wage standards be met on federal construction projects. James J. Davis, Secretary of Labor under Presidents Harding, Coolidge and Hoover was elected as a Republican Senator from Pennsylvania in 1930. Shortly thereafter, Sen. Davis introduced a companion prevailing wage bill in the Senate.

Support of the legislation was solid and widespread. In 1931, the Secretary of Labor, Assistant Secretary of War and Acting Supervising Architect all appeared at hearings to support the bill.¹¹ Contractors also supported the idea of protecting local standards as many were being forced to stand by and watch as fly-by-night contractors underbid local employers by paying far below the area's wage rate. Clearly, the law was as concerned with protecting the local contractor as it was with protecting and stabilizing local wage rates. Fair contractors realized the two purposes went "hand-in-glove" with one another.

Congress also recognized that both workers and contractors were seeing their

opportunities stolen by a "selfish group of contractors" who disregarded local standards and underbid local community-based contractors. Congress was concerned that local contractors and local wage earners, who were contributors to their community's tax base, were being deprived of the economic benefits associated with the construction of federally assisted projects in their own communities.¹² The law, in the words of Sen. Davis, was designed to remedy the situation and "give a square deal to all."¹³

The Cato Institute asks us to believe that the Act's many supporters were using racist code words for black labor when they described the underlying problem to be the use of "cheap", "imported", "transient", "migratory" and "itinerant" labor to undermine local labor standards. But the record reveals that Rep. Bacon and other supporters were concerned about any degradation of local labor standards by low-wage workers brought from outside the locality, without regard to whether the "itinerant" workers were black or white workers. For example, Rep. Connery of Massachusetts described a hospital in Vermont built by a contractor who "brought in people from out West . . . at wages very much below the prevailing scale of union wages in Vermont," and a post office in St. Louis constructed by a contractor who "brings in labor from South Dakota."¹⁴

The Cato Institute would also have us believe that the only contractors whose practices the Act was intended to prevent were southern contractors who employed black workers. Again, the legislative record demonstrates that this simply was not the case. In testifying in support of the original legislation in 1931, William Green, president of the American Federation of Labor, presented documentation about complaints he received from 16 areas around the country. His testimony makes it quite clear that the contractors who presented problems were not just southern "invaders" of the north. For example, one complaint involved a contractor from Des Moines on a project in Arkansas. Another dealt with a Louisville contractor on a post office facility in the same city. Others involved a Texas contractor on an El Paso project; a New York City contractor on a Utica, New York project; and a Pennsylvania contractor on a New Jersey project.¹⁵

The Davis-Bacon Act was not only intended to stabilize local wage rates and labor standards for local wage earners and local contractors, but also was intended to help migratory workers by preventing unsavory contractors from exploiting them. Representative LaGuardia (R - Progressive - N.Y.) appreciated the fact that the Act would help all workers. As Rep. LaGuardia stated, "[t]he unfair and unethical contractor however, after getting the contract and being paid on such basis, turns around and imports labor from other localities at low and reduced prices, not only exploiting his own workers, but all to the discrimination and disadvantage of labor living in that vicinity."¹⁶ After witnessing the very project which the Cato Institute alleges gave rise to the Act, Rep. LaGuardia further stated:

I saw with my own eyes the labor that [the contractor] imported there from the South and the conditions under which they were working. These unfortunate men were huddled in shacks living under the most wretched

conditions and being paid wages far below the standard. These unfortunate men were being exploited by the contractor. ¹⁷

Clearly, the Davis-Bacon Act was not designed to discriminate against minority construction workers. Rather it was implemented to protect all workers, be they white, black or any other race. Moreover, the Act sought to protect and stabilize labor standards to aid local communities and contractors who were having their areas raided by a select group of unscrupulous contractors. In suggesting that Davis-Bacon was enacted for a discriminatory purpose, the Cato Institute has deliberately turned a blind eye to the law's true intentions. Indeed, if the Davis-Bacon Act were repealed, as the Cato Institute urges, then today's construction workers would risk sharing the fate of the unfortunate persons, black and white, who were employed by the infamous Alabama contractor in New York in 1927 – all could be paid wages far below the standard and all could be exploited.

In sum, the legislative record demonstrates that Davis-Bacon was enacted to save all construction workers, including minority employees, from abusive practices by mandating that a fair and livable wage be paid to every worker.

III. THE DAVIS-BACON ACT BENEFITS MINORITY CONSTRUCTION WORKERS TODAY

A. The Davis-Bacon Act Does Not Reduce Minority Employment

The Cato Institute also charges that the Davis-Bacon Act reduces employment opportunities for present-day minority construction workers. But an examination of the economic realities facing construction workers today shows that the Cato Institute is engaging in a hollow rhetorical assault upon the Act.

The Davis-Bacon Act erects no barrier to the employment of minorities. It does nothing to exclude from federal jobs those contractors, either union or non-union, that employ minority construction workers. It simply requires that those contractors pay all their employees, including minority employees, wages that are no less than the locally prevailing wages. Thus, far from being discriminatory, the Davis-Bacon Act mandates equal and fair treatment of all employees.

According to the Cato Institute, the prevailing wage requirement hurts minority workers because if a contractor is required to pay a prevailing wage to its employees, it will not hire minorities. The gist of the Cato Institute's argument is that contractors cannot, and should not, be expected to pay prevailing wages to minority workers. The unstated assumption behind that argument is that minority construction workers do not deserve to be paid the same prevailing wage as their white counterparts. That racist assumption lies at the core of the Cato Institute's argument.

The Cato Institute tries to veil its racist premise with economic jargon, contending

that prevailing wages bid minorities out of the labor market because minority construction employees are "unskilled." The labeling of minority employees as "unskilled" is itself offensive and racist. It also is reminiscent of the discriminatory practice of underclassifying workers (often minorities) into lower skilled job categories (i.e. "helpers") to justify the payment of lower wages, even though the workers actually perform more highly skilled work.¹⁸

The Cato Institute claims that unskilled minority workers cannot gain employment on projects subject to the Davis-Bacon Act. This is a bald-faced lie. Since 1935 and continuing to the present, the Labor Department has continuously issued prevailing wage determinations for skilled, unskilled and semi-skilled laborers' classifications. For example, the "General Wage Determinations Issued under the Davis-Bacon and Related Acts"¹⁹ establishes the job classifications for laborers on Davis-Bacon projects in counties in all fifty states. And who are these workers employed daily on thousands of federal construction contracts subject to the Davis-Bacon Act? They are in large part minority workers, whether they be African-American, Hispanic or Native American.²⁰

Dr. John Dunlop, former Secretary of Labor under President Ford and the nation's preeminent construction industry economist, has described how the Davis-Bacon Act is integral to the continued employment of these minority laborers on federal construction. For example, he states that under the auspices of the Laborers'-Associated General Contractors Educational and Training Fund, 31,913 construction laborers received training in 1989 from 73 local training funds. Forty percent (40%) of these Laborers' trainees were minority and female workers.²¹ These are the minority and female workers who have gone on to employment in jobs protected by the Davis-Bacon Act. If the Cato Institute has its way and Davis-Bacon is repealed, it is these minority workers who will face either job loss or an immediate reduction in wages and fringe benefits.²²

We believe it is Dr. Dunlop, and not the Cato Institute, who understands the effects of Davis-Bacon on minority workers. And the Cato Institute offers virtually no proof to back up its claims. The Cato Institute does not cite any statistical evidence showing that Davis-Bacon reduces minority employment, but relies only on conclusory statements made by those supporting repeal of the Davis-Bacon Act more than a decade ago. The Cato Institute fails to provide any evidence that employment of minority construction workers on projects covered by the Davis-Bacon Act is disproportionately low, or any proof that the employment of minorities on such projects is lower than it would be if the law were not in effect.

In fact, data gathered by the Department of Labor indicates that the Davis-Bacon Act does not reduce minority employment. According to reports submitted by construction employers to the Office of Federal Contract Compliance Programs in 1991,²³ the percentage of minorities employed by contractors on federally funded projects (20.12%) was nearly identical to the percentage of minorities employed on non-federal projects (20.56%).²⁴ And, for classifications covered by the Davis-Bacon Act -

B. The Davis-Bacon Act Protects Minority Construction Workers From Exploitation and Wage-Cutting

The protections provided by the Davis-Bacon Act are urgently needed by America's construction workers. The nature of the construction industry, and the special characteristics of the government contracting process, make construction workers on government projects particularly susceptible to wage-cutting competition.

The construction industry is intensely competitive. There are hundreds of thousands of contractors, mainly small business ventures, competing for work on federally funded projects.³² Because it is relatively easy to go into business as a contractor, firms often enter the market to compete for work on a particular project.³³ In the case of government contracts, the government is required by law to award the contract to the lowest bidder, with a few exceptions. Consequently, the pressure on contractors to minimize their costs is enormous.³⁴ And, because the employer in the construction industry has little control over most of its major costs, such as land, materials, equipment, and interest payments, the cost-cutting is invariably directed at wages and other labor costs.

Unfortunately, construction workers are in a poor position to resist these wage-cutting pressures. Construction employees have virtually no job security, as they rarely form the kind of long-term employment relationship that is the norm in most other industries. Instead, they are hired only for the duration of a particular project, and must look for a new employer when that project is finished.³⁵ Employment in construction fluctuates widely depending on the season, the economy, and various other circumstances,³⁶ and construction workers face unemployment rates that are persistently high.³⁷ For all of these reasons, there is a perpetual pool of unemployed construction workers competing for available jobs. And because of their desperate circumstances, unemployed construction workers can be induced to go wherever the jobs are, and to work at virtually any price.

Under these conditions, the offer of work can be and is used to drive down wage levels.³⁸ Without the minimum wage floor provided by Davis-Bacon, all contractors would be forced to bid down the price of labor to match the lowest common denominator. Then federally-funded construction contracts would destroy locally prevailing wage structures as contracts would be awarded to the lowest bidders - the contractors who pay the lowest wages to the most desperate and least skilled workers.

The protections provided by the Davis-Bacon Act to wages and benefits are especially important to minority employees. As former Secretary of Labor, and respected labor economist, Ray Marshall has observed, "[t]he workers most often victimized by unscrupulous contractors are the minority workers, whether he or she is Black, Hispanic, a native American or an undocumented worker . . . Davis-Bacon is an integral part of ensuring a decent life for the hardworking men and women in the construction

industry.⁴⁰ Similarly, Norman Hill, President of the A. Philip Randolph Institute, has concluded that minority workers are "particularly vulnerable to exploitation such as the wage-cutting practices which the Davis-Bacon Act of 1931 is designed to prohibit."⁴⁰

Given its extremist ideological bent, the Cato Institute would probably deny that there is such a thing as exploitation of workers, but America's construction workers know better. Even with the Davis-Bacon Act in place, exploitation of minority workers goes on today by dishonest contractors. For example, testimony submitted by a Department of Labor official to the Senate Subcommittee on Labor contained a vivid description of just how Davis-Bacon violations can have a particularly harsh impact on minority workers:

Violations continue to mount as unscrupulous contractors come on the scene and old contractors take more chances and become more inventive in their efforts to evade the requirements of the Act. Outright falsification and concealment is still found in many cases.

[One] case that involved many forms of cheating employees was a firm which took the easy route of employing primarily undocumented workers. These workers will not complain. They represent an ideal work force for those who would exploit labor on government jobs . . . This subcontract was for the fabrication, transportation, and installation of bridge railing on a bridge across the Potomac River. The company employed undocumented workers at rates of \$10.00 per day plus food and lodging for work days of 7 to 10 hours daily, 6 and 7 days a week. It should be noted that this contractor is transporting many undocumented aliens from the South Texas area where wage rates are lower, to the Washington, D.C. area with higher prevailing wage rates . . .

[One] Arkansas contractor was found owing \$7,000 in back wages to employees. Payrolls were falsified to show compliance . . . The employees were all black and another example of a group exploited by an unscrupulous employer.⁴¹

If the protections of the Davis-Bacon Act were removed, many more minority workers would face this type of exploitation. And all construction workers, including all minority construction workers, would be forced to accept lower wages and reduced or no benefits when working on federal construction projects.⁴² To claim, as does the Cato Institute, that reducing the wages and benefits of minority workers is somehow in their best interest is ludicrous, and smacks of the worst sort of racism and paternalism.

Unlike the Cato Institute, minorities recognize that their interests are served by the preservation of the Davis-Bacon Act. For example, many representatives of the African-American community have supported Davis-Bacon because of its role in protecting minority workers. As noted earlier, Norman Hill, President of the A. Philip Randolph

Institute, has acknowledged the importance of Davis-Bacon in preventing exploitation of minority construction workers.⁴³ Similarly, Rep. Augustus Hawkins, former Chairman of the House Education and Labor Committee, has been a leading supporter of the Davis-Bacon Act, hailing it as "vital worker protection."⁴⁴

Significantly, Rep. Hawkins also has described the current role of Davis-Bacon in protecting workers in much the same way as Rep. Bacon and others did in 1931. He has stated:

I think we should understand how Davis-Bacon actually operates . . . [S]uddenly, you are faced with a contractor who comes in, bids on a contract, based on lower wages paid its itinerant workers, and ignores equity, and the moral responsibility to your community. They could have come from thousands of miles away in order to underbid your local people. Now this results, as has been stated in the past, in very shoddy construction work. Now maybe it won't appear in the first few years, but over the life of the construction, shoddy workmanship will be revealed. It was to prevent such practices that Davis-Bacon was started in the first place back in the 1930's.⁴⁵

As this passage demonstrates, Rep. Hawkins clearly does not believe that "itinerant" labor is a racist code word or that the original purpose of the Davis-Bacon Act was to prevent black employment on federal construction jobs.

Similarly, in a debate on a bill to weaken Davis-Bacon, Rep. Bill Clay of Missouri, a long-time member of Congress and former Chairman of the House Subcommittee on Labor-Management Relations, described how Davis-Bacon is particularly critical in protecting minority workers:

One of the myths about the Davis-Bacon Act is that it only protects highly paid construction workers . . . This proposal [to weaken Davis-Bacon] would cause serious problems for minority and lower paid construction workers . . . This [bill] would severely limit the employment standards and opportunities of the segment of the construction work force which is largely composed of minority members . . . It is clear that [this bill] will limit training of young workers and have a devastating impact on the living standard of minority construction laborers - many of whom now struggle to maintain a decent standard of living at backbreaking and dangerous work.⁴⁶

Like these distinguished African-Americans, leading organizations representing minorities and women support Davis-Bacon. The NAACP, the National Women's Political Caucus, the Navajo Tribal Council, and the Mexican American Unity Council have all expressly endorsed the Davis-Bacon Act.⁴⁷ The Cato Institute's cavalier dismissal of the

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opinions of minority group representatives and organizations, as if it knows better than they what is best for minority workers, is yet another example of its patronizing and racist attitude.

In sum; as is widely recognized by those who, unlike the Cato Institute, truly have the interests of minority workers in mind, the Davis-Bacon Act benefits minority construction workers by ensuring that they are paid fair and decent wages and fringe benefits when they work on federal projects.⁴⁸

C. The Davis-Bacon Act Benefits Minority Construction Workers by Providing the Framework Within Which the Nation's Apprenticeship System Has Grown and Flourished

The General Accounting Office (GAO) has found that the "major incentive for construction contractors to use apprentices has been that registered apprentices can be paid less than prevailing rates on federally funded construction projects covered by the Davis-Bacon Act."⁴⁹ Davis-Bacon is, in short, the underpinning for the private apprenticeship system in the construction industry.

The important interplay between Davis-Bacon and the growth of the private construction apprenticeship system has existed since the 1930's. Under the 1937 National Apprenticeship Act, a mechanic or laborer classified as an apprentice or trainee can be paid less than the prevailing wage rate on a project covered by the Davis-Bacon Act if he or she is enrolled and registered in a legitimate training program with the Labor Department's Bureau of Apprenticeship and Training (BAT) or a state agency recognized by the BAT. This interplay between the Davis-Bacon Act and the National Apprenticeship Act has ensured a skill base that has produced quality and safe construction on federally-financed and assisted public buildings and public works. The BAT-approved joint union-management apprenticeship programs have proved for more than a half century their worth in providing the training and skill development our nation must have. Repeal of the Davis-Bacon Act would permit contractors to employ unskilled and semi-skilled workers on projects now covered by the Davis-Bacon Act without registering them in apprenticeship and training programs approved by the BAT or an appropriate state agency.⁵⁰

Repeal of Davis-Bacon and the resultant erosion of the apprenticeship system in the construction industry would have a terrible impact upon minority construction workers because of the "increase [in] access of minorities to the jobs and apprenticeship" in construction since the 1960's.⁵¹ The GAO has found that "[s]ince 1973, the proportion of minorities in apprenticeship programs has risen by nearly 50 percent to 22.5 percent of apprentices . . . about the same as their representation in the labor force . . . [By] 1990 the number of minority apprentices had exceeded the previous high reached in 1981."⁵² And, the largest number of civilian minority apprentices are found in construction trades, including carpenter (22.3 percent minority), roofer (38.2%); painter (28.9%), operating

engineer (32.4%) and cement mason (48.1%).⁶³

Thus, formal apprenticeship programs are now the premier path for minority workers into skilled, high wage jobs in construction. That fact has been confirmed by Dr. John Dunlop. Based on his in-depth examinations of the construction industry, Dr. Dunlop has stated:

My experience teaches that formal training programs are essential to recruit and train minorities for the construction industry. Indeed, this is how progress has been made. Over the past decade, substantial progress has been made in recruiting minorities and now women to the ranks of the trades and also in placing them into bona fide craft apprentice programs. That system deserves the support of our government.⁶⁴

It is clear, therefore, that repeal of the Davis-Bacon Act would destroy the private apprenticeship system in the construction industry, and consequently would wipe out the decades of progress made by minority workers in securing high wage, skilled construction jobs through participation in apprenticeship programs.

IV. THE SO-CALLED "REFORMS" OF THE REAGAN-BUSH ERA WILL DEPRESS MINORITY EMPLOYMENT ON FEDERAL CONSTRUCTION PROJECTS

The Cato Institute, like many other opponents of the Davis-Bacon Act, seeks to eviscerate the law by a series of "reforms" because they have failed to convince Congress to repeal the Act. The leading such "reform", begun in the Reagan-Bush era, was the introduction of low-wage "helpers" onto federal construction projects. The result of the helper "reform" measure is to provide contractors a source of cheap labor on federal construction projects, for whom they need not provide training that would allow these workers to advance up the skill ladder.

Dr. Dunlop has studied the so-called helper "reform" in great depth⁶⁵ and has concluded that its chief victims will be minority construction workers.⁶⁶ Dr. Dunlop's examination shows that weakening the Davis-Bacon Act by permitting the unregulated employment of low-wage, untrained "helpers" on federal construction projects will sharply reduce minority employment on these projects:

I strongly disagree with the conclusion that allowing contractors to employ the helper

classification throughout the entire construction industry will enhance work opportunities for minorities and women.... Under the new helper regulation, it is my opinion that minorities and women who have achieved employment in the building trades and are currently enrolled in bona fide craft apprenticeship programs will be replaced with lower paid and untrained helpers ...⁵⁷

Like Dr. Dunlop and many other neutrals who have examined this Davis-Bacon "reform", United States District Court Judge Harold Greene has described how the use of "helpers" will harm minority employment: "The [helper] regulation adopted by the present Secretary [of Labor Raymond Donovan] is likely to have the effect of allowing contractors to replace higher wage minority laborers with lower wage minority helpers."⁵⁸ Judge Greene rejected Secretary Donovan's argument that the "helper" reform would in any way advance job opportunities for women and minorities and specifically found that it would result in the creation of a "cheap" classification from which such workers would have little hope of escape. Judge Greene stated:

The Secretary defends the regulation in part on the ground that it will facilitate non-formal training of women, minorities, and young workers. . . . In fact, it will assign members of such groups to the lowest classification of workers, and it will likely keep them there on a permanent or long-term basis.⁵⁹

Not surprisingly in light of these facts, Congress voted three times in the 102d Congress alone to stop the Secretary of Labor from implementing the helper "reform".⁶⁰ The debates from these votes show that members of Congress share the view that this "reform" will do nothing but cost African-Americans decent jobs, good pay, benefits and training opportunities. For example, Rep. Craig Washington (D-Tx.) observed "that construction laborers are the largely minority and female component of the construction workforce . . . [I]f the new helper class is now used . . . [t]heir wages are cut and they lose health care coverage . . . [C]ontractors can now simply reclassify these minority and female laborers as helpers and cut their wages and eliminate their fringe benefits."⁶¹ The debate in the Senate was similar.⁶² Sen. Tom Harkin (D-Ia.) stated "[w]e are going to have a whole subculture of helpers with subminimum wages, low wages with no hope of getting out of it."⁶³

In an earlier vote on the helper "reform" in 1988⁶⁴, Rep. Bill Clay pointed out that the "minority members of Congress" believe that the helper

rule would create a subclass of low wage, minority workers on federal construction projects:

There are a number of leading minority members of Congress who specifically dispute that the new helper regulation will advance minority employment ... The proposal will allow contractors to substitute helpers for laborers and pay them lower wages for the same work ... It is clear that the Stenholm helper proposal will limit training of young workers and have a devastating impact on the living standard of minority construction laborers.⁶⁵

Once again, while the Cato Institute may believe the helper "reform" will advance minority employment, African-American representatives in Congress, such as Rep. Clay, soundly reject that view.

V. THE DAVIS-BACON ACT DOES NOT INCREASE FEDERAL CONSTRUCTION COSTS

Finally, the Cato Institute argues that the Davis-Bacon Act costs the federal government "billions every year...." Like other critics, the Cato Institute offers no sound economic analysis to support this claim. It is not surprising, because the leading construction industry economists in the nation have concluded that the Davis-Bacon Act is either neutral with respect to costs or that repeal of the Act may even add dollars to the federal budget in the long-run.

The so-called "studies" of Davis-Bacon's impact upon federal costs relied upon by the Act's opponents use an economic methodology that equates wage reductions for construction workers employed on federally-funded construction projects with a dollar-for-dollar savings in federal budgetary outlays for that construction project. Dr. Bourdon and Dr. Levitt have described such an approach as a "crude methodology."⁶⁶ Dr. Dunlop has described this methodology as "a simplistic formulation which is wanting from an economist's point-of-view...."⁶⁷

Why do leading economists such as Dr. Dunlop describe these "studies" as "crude" and "simplistic"? It is because they fail to take into account, as Dr. Dunlop says, the "myriad"⁶⁸ factors which go into the cost of a construction project, including productivity costs arising from low-paid, lower-skilled workers who take longer to perform their work, thereby increasing overall labor costs. The productivity factor is a highly significant one in the

labor-intensive construction industry and can wipe away any short-term cost benefits derived from lowered wage rates. These "crude" studies also fail to consider that if low-wage workers are utilized on federal jobs, an increased number of highly-paid supervisors must be hired to supervise these workers. This factor also drives up overall construction costs.

Productivity is not the only factor ignored by these "studies" advanced by the Act's opponents. It has been shown that when Davis-Bacon is not enforced or is not applicable to a federal construction project, any short-term savings which occur from a reduction in wages are offset later on because inferior construction leads to costly long-term maintenance, repair and reconstruction of the public work or building.

Dr. Dunlop's economic analysis concludes that Davis-Bacon is at least "neutral with respect to costs" because of the productivity differences between high and low wage workers and the resultant cost of inferior construction.⁶⁹ He has stated:

Its [Department of Labor] conclusion was reached by use of a simplistic formulation which is wanting from an economist's point of view and which I find to be totally insupportable. Its methodology is based on a formula which utterly fails to take into account many of the real economic factors and forces which contribute to costs on a construction project. It appears that the Department takes the current wage rates and subtracts them from the savings to be gained by the cheaper rates.... [T]he Department multiplies that wage differentiation ... and then arrives at some projected mathematical savings....⁷⁰

Dr. Dunlop further states:

[I]n the real world ... the speed of operations is also vital to costs ... There is simply no sound basis for gratuitously assuming that lower wage rates in the construction industry generally mean lower costs to the public....⁷¹

Many other studies have reached the same conclusion as Dr. Dunlop.⁷²

In addition to Dr. Dunlop's study, other studies which have examined directly the factors contributing to construction costs on public jobs show little

if any correlation between overall costs on prevailing wage jobs and higher wage levels. For example, one study examined the costs of construction of new secondary schools on a state-by-state basis and ascertained the average cost of construction per classroom in new secondary schools during the period 1968 through 1974. It concluded that the highest costs per classroom were not necessarily in high-wage states with prevailing wage laws. For example, California, a high wage state with a prevailing wage law, was seventeenth from the bottom in costs. Among the states which paid more for the construction of new secondary schools were twelve that had no prevailing wage laws at all.⁷³

Another study, using 1987-1990 data from the Federal Highway Administration, examined comparative costs on federally-funded highway construction. That study shows that states in which higher-wage workers are employed to construct highways pay about ten percent less per mile in total costs even though they pay about twenty percent higher in labor costs per mile. This result was attributable to lower man-hours per mile (14,810) in higher wage states compared to 26,651 man-hours per mile in lower wage states - or a 44% difference.⁷⁴

Also, a comprehensive analysis of the impact of Davis-Bacon was prepared by the HUD Inspector General and reported in the HUD Audit Report on Monitoring and Enforcing Labor Standards. It found that when Davis-Bacon is not enforced on federal construction, there is lost revenue in unpaid taxes and higher long-run repair and maintenance costs due to the original, inferior construction which comes from using low-wage, untrained workers. It found:

... [a] direct relationship between labor standards violations and construction deficiencies.... This systematic cheating is costing the public treasury hundreds of millions of dollars, reducing workers earnings, and driving the honest contractor out of business or underground.⁷⁵

The HUD Audit Report also demonstrates the relationship of inadequate Davis-Bacon enforcement to poor quality construction:

Competitive bidding frequently results in use of less skilled workers paid below prevailing wage rates and shortcut construction methods leading to poor quality work.... Direct correlation between labor violations and poor quality construction on 17 projects are shown in Appendix 3. On these 17 projects, we found violations and

construction deficiencies in the same construction trades.

Poor workmanship quality, in our opinion, results from use of inexperienced or unskilled workers and short cut construction methods. Roofing short cuts result in leaks and costly roof and ceiling repairs. While short cuts in painting may not be as serious, it does require future maintenance expense by requiring repainting sooner than anticipated. Electrical short cut deficiencies are not as readily detected but may lead to serious problems such as fires and shocks.... Poor quality work leads to excessive maintenance costs and increased risk of defaults and foreclosures.⁷⁶

In contrast to Dr. Dunlop's conclusions are three papers of the Congressional Budget Office (CBO) which examined various options for modifying the Davis-Bacon Act and attempted to estimate their impact on the Federal budget. The original 1983 CBO paper, while maintaining that "an assessment of costs against benefits must under-lie [sic] any possible legislative action on Davis-Bacon" nevertheless focused its attention primarily on Federal budgetary costs issues rather than attempting to quantify both costs and benefits associated with the Davis-Bacon Act.⁷⁷

In an exhaustive analysis of the first two CBO estimates, the Preliminary Review of Congressional Budget Office (CBO) Cost Estimates of the Davis-Bacon Act, Workplace Economics, Inc. (1986), concluded that the CBO papers are wholly inadequate as a basis to conclude that repeal of Davis-Bacon will, in fact, save the taxpayer money. It found:

- o The 1983 and 1986 CBO estimates fail to produce a full and accurate cost-benefit accounting of the impact of Davis-Bacon standards. Neither all the direct nor all the indirect benefits of the legislation were measured, such as positive regional income multiplier effects, the impact of the Act on the quality of construction and the Act's role in aiding the recruitment and training of skilled labor;*
- o The 1983 and 1986 CBO estimates rely in large part on a 1982 Department of Labor (DOL) analysis which was marked by significant shortcomings in that it failed to provide any quantification of*

possible offsets to the purported cost savings, such as offsets that may be associated with a decline in apprenticeship programs.

- o The CBO failed to take into account that fewer apprenticeship programs will either add to the cost of training workers or, without employer-provided training, will result in a long term shortage of skilled craftsmen. Fewer apprenticeship programs will also result in the social cost of fewer women and minority craft workers being trained. None of these potential offsets were quantified by either the DOL or the CBO.
- o The 1983 and 1986 CBO estimates failed to provide any offsets for productivity differences associated with higher versus low wage workers.⁷⁸

The Preliminary Review of Congressional Budget Office (CBO) Cost Estimates of the Davis-Bacon Act also describes how the positive multiplier stimulus on local economies provided by spending generated by construction workers employed on federal contracts was not addressed by the CBO. Indeed, despite CBO's concern for the impact of Davis-Bacon on the federal budget, no effort was made to assess the negative tax revenue implications at both the federal and local levels of reductions in Davis-Bacon outlays.⁷⁹

In the CBO's most recent congressional testimony, it made no attempt to cure the defects of its previous two studies and even conceded that "[h]igher wage rates do not necessarily increase costs.... [I]f these differences in wages were offset by hiring more skilled and productive workers, no additional construction costs would result."⁸⁰

Congress has been persuaded for the last fifteen years that repeal of the Davis-Bacon Act would not result in a reduction of federal budgetary outlays for federal construction projects. As Rep. Hawkins has argued so well, the claim that the Davis-Bacon Act increases costs on federally-funded construction is based upon "imaginary savings." He has stated:

This Imaginary savings is something that is clearly an illusion. No study has really considered all of the operations in terms of cost overruns, of the under-handed practices engaged in the construction industry by fly by

night operators who move into your community where your local people, your local business people and your local wage earners have combined to establish a local wage level.

Now is this a service to the taxpayers or is it a cost to that community and a cost to the Federal Government? I think that in talking about so-called savings we ignore the fact that this type of practice would prevail. So what is the opposition [to Davis-Bacon] about today? It is to help these fly-by-night operators operating on the basis of greed against responsible construction work.⁸¹

VI. CONCLUSION

The Davis-Bacon Act is premised on the principle that all construction workers on federal projects should be paid a fair and decent wage. The Cato Institute rejects that premise, at least so far as it applies to minority construction workers. The Cato Institute wants to bring back vicious wage-cutting as the primary basis for competition for federal construction contracts, and apparently has no qualms about also bringing back widespread exploitation of and substandard conditions for workers on such projects. There can be little doubt that minorities would be among the chief victims of such exploitation.

Thus, the only opportunity that the Cato Institute wants to open up for minority construction workers is the "opportunity" to be paid substandard and inequitable wages and benefits by unscrupulous contractors. As leading minority group representatives have indicated through their support of Davis-Bacon, minorities are not interested in pursuing that kind of "opportunity." And, regardless of what the ivory-tower ideologues of the Cato Institute obviously think of them, minority construction workers deserve better than that. They deserve fair and living wages, an adequate level of benefits, jobs that provide them with training and genuine opportunity for advancement, and jobs that accord them equal status with other construction workers - in other words, they deserve all of the things that the Davis-Bacon Act provides and makes possible.

END NOTES

1. Arizona, Delaware, Kansas, Kentucky, Maryland, Massachusetts and New York had already passed some form of prevailing wage legislation. See Employment of Labor on Federal Construction Work: Hearings on H.R. 7995 and H.R. 8232 Before the Committee on Labor, 71st Cong., 2nd Sess. 14 [hereinafter Hearings]; cf. 125 Cong. Rec. 21155 (1979).
2. California, Florida, Maine, Massachusetts and New Hampshire all had enacted such legislation. Hearings, 14-15 (March 3, 1930).
3. Id.
4. 125 Cong. Rec. 21155 (1979).
5. As Representative O'Connor (D.N.Y.) noted, "there is not a progressive State or municipality in the Union that has not had identical legislation of this kind for years." 74 Cong. Rec. 6512 (1930).
6. See Sutherland Stat. Const. § 48.15, 48.16 (4th Ed).
7. Hours of Labor and Wages on Public Works: Hearings on H.R. 17069 Before the Committee on Labor, 69th Cong., 2d Sess. 2 (February 18, 1927).
8. Biographical Directory of the American Congress 1844-45 (1971).
9. Hearings on H.R. 17069, supra note 7, at 4.
10. 74 Cong. Rec. 6510 (1931) (Remarks of Rep. Bacon).
11. 74 Cong. Rec. 6505 (1930).
12. Id.
13. S. Rep. No. 1445, 71st Cong., 3d Sess., 2 (1931). Sen. Davis asserted that the bill was "fair and just to the employees, the contractors and the Government alike." Id.
14. Hearings on H.R. 16619 Before the House Committee on Labor, 71st Cong. 3d Sess. 5,7 (January 31, 1931).
15. Hearings Before the Committee on Manufactures on S. 5904, 71st Congress, 3d Sess. 10-13 (Feb. 3, 1931).
16. 74 Cong. Rec. 6510 (1930).
17. 74 Cong. Rec. 6510 (1930).

18. See Norman Hill, Minorities, Women and the Davis-Bacon Act, National Journal, Sept. 19, 1981, at 4.
19. General Wage Determinations Issued Under the Davis-Bacon Act and Related Statutes, U.S. Department of Labor (Jan. 2, 1987).
20. See July 15, 1982 Affidavit of John Dunlop at ¶ 15 and December 17, 1990 Affidavit of John Dunlop at ¶ 9, Building and Construction Trades Department v. Martin, 961 F.2d 269 (D.C. Cir. 1992)(No. 90-5345).
21. Dunlop (December 17, 1990), supra note 20.
22. Id. at ¶ 8 and ¶ 11.
23. The reports were submitted by all federal contractors with 50 or more employees, and all other contractors with 100 or more employees.
24. See U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs, 1991 Utilization for Construction SICS (computer printout dated May 28, 1993).
25. Id.
26. Dr. Thieblot's Prevailing Wage Legislation, (1986) was funded by the Public Service Research Council, an organization which has appeared in lawsuits challenging the Davis-Bacon Act, along with the non-union contractors' organization, the Associated Builders and Contractors. Other works by Dr. Thieblot were funded by the Associated Builders and Contractors Merit Shop Foundation, including The Little Davis Bacon Acts: Prevailing Wage Laws of the States (1976). Dr. Thieblot's The Davis-Bacon Act (1975) was funded by the Chamber of Commerce.
27. The data shows the following percentages of minority participation in apprenticeship programs for the years 1986-1989:

	<u>% Minorities in Union Programs</u>	<u>% Minorities in Non-Union Programs</u>
1986	15.40	13.47
1987	14.10	12.92
1988	14.13	13.30
1989	16.48	15.36

See U.S. Department of Labor, Bureau of Apprenticeship and Training, Apprentices and Minority Apprentices in Construction Industry By Year of Registration and Types of

Sponsors (1993).

The BAT data represents 60% of the national totals for apprentices, because it does not include the data for the 17 states and territories with Apprenticeship Councils.

28. According to the data, apprenticeship programs had the following rates of cancellations by minority participants in the period 1986-1989:

	<u>Cancellation Rate of Minorities in Union Programs</u>	<u>Cancellation Rate of Minorities in Non-Union Programs</u>
1986	27	42
1987	28	49
1988	30	40
1989	36	47

See U.S. Department of Labor, Bureau of Apprenticeship and Training, Apprentices and Minority Apprentices in Construction Industry By Year of Registration and Types of Sponsors (1993).

29. Dr. Clinton C. Bourdon & Dr. Raymond E. Levit, Union and Open-Shop Construction 68 (1980). Bourden and Levit further stated:

While this is in large part due to the relative absence of data on minorities in nonunion construction firms, this lack has not prevented some from concluding that 'the open shop sector is both more hospitable as a whole to minority employment and being without craft restrictions and union rigidities, more capable of dealing with the problem.' . . . This conclusion is not supported by the only available data on minority participation in union and non-union apprenticeship programs . . . Tabulations from data show that minority participation is substantially higher in union programs.

Id.

30. See e.g., Hill, supra note 18, at 5 ("Many opponents of the Davis-Bacon Act attempt to put the issue in the context of union vs. non-union interests and argue that the law's only supporter is organized labor. This is clearly not true.").

31. Id.

32. See Ray Marshall, "America Still Needs Davis-Bacon", National Journal at 6 (Sept. 19, 1981).

33. Id.

34. *Id.*
35. *Id.*
36. S. Rep. No. 96-259, 96th Cong., 1st Sess. 4 (1979).
37. Marshall, *supra* note 25, at 6.
38. S. Rep. No. 96-259, 96th Cong., 1st Sess. 4 (1979).
39. Marshall, *supra* note 25, at 8.
40. Hill, *supra* note 18, at 4.
41. Statement attached to testimony of the Building and Construction Trades Department, submitted to Subcomm. on Labor of the Senate Comm. on Labor and Human Resources (April 29, 1981).
42. Dunlop (December 17, 1990) at ¶ 8 and ¶ 11, *supra* note 20.
43. See Hill, *supra* note 18.
44. 134 Cong. Rec. H2818 (daily ed. May 3, 1988).
45. 134 Cong. Rec. H2827 (daily ed. May 3, 1988).
46. 134 Cong. Rec. H2823 (daily ed. May 3, 1988).
47. Hill, *supra* note 18, at 5.
48. Smaller minority contractors have also been found to benefit from the Davis-Bacon Act. Smaller federal construction jobs, because of the equality of bidding opportunity provided by Davis-Bacon, serve as entry for small contractors into the construction industry. The smaller contractor may compete with large contractors because of the control on wages. And, because of the greater concentration of minority contractors in the ranks of these smaller contractors, the "entry of minority contractors into the construction industry will be severely curtailed if the Davis-Bacon provisions are lifted from smaller Federal jobs ...". Therefore, retaining Davis-Bacon will not only continue its protection for workers, but will also ensure that smaller contractors, and particularly small, minority contractors, are able to successfully compete for federal construction contracts. S. Rep. No. 96.259, *supra* note 36, at 11.
49. General Accounting Office, GAO/HRD-92-43, *Apprenticeship Training* at 11 (1992).

50. *Dunlop* (July 15, 1982) at ¶ 14, supra note 20.
51. *General Accounting Office*, supra note 49, at 11.
52. *General Accounting Office*, supra note 49, at 21.
53. Id. at 30.
54. *Dunlop* (July 15, 1982) at ¶ 15, supra note 20.
55. *Dunlop* (July 15, 1982), supra, note 20; *Dunlop* (December 17, 1990), supra note 20.
56. *Dunlop* (July 15, 1982) at ¶ 15, supra note 20.
57. *Dunlop* (December 17, 1990) at ¶ 6 and ¶ 7, supra note 20.
58. *Building Trades v. Donovan*, 553 F. Supp. 352 (D.D.C. 1982), aff'd in part and rev'd in part, 712 F.2d 611 (D.C. Cir. 1983), cert. denied, 464 U.S. 1069 (1984).
59. Id.
60. See *Dire Emergency Supplemental Appropriations Act of 1991*, Pub.L.No. 102-27; *Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations for 1992; and Supplemental Appropriations, Transfers, and Recessions Act of 1992*.
61. 137 Cong. Rec. H1531 (1991).
62. 137 Cong. Rec. S3548 (1991).
63. 137 Cong. Rec. S3628 (1991).
64. 134 Cong. Rec. H2829 (1988).
65. 134 Cong. Rec. H2823 (1988).
66. *Union and Open Shop Construction*, supra note 29, at 81.
67. *Dunlop* (July 15, 1982) at ¶ 11, supra note 20.
68. Id. at ¶ 12.
69. Id. at ¶ 12.

70. Id. at ¶ 11.

71. Id. at ¶ 12 and ¶ 13.

72. See Allan B. Mandelstamm, "The Effect of Unions on Efficiency in the Residential Construction Industry: A Case Study", Industrial and Labor Relations Review 18, (1965) (presents a detailed comparison of union and nonunion home building in Michigan and concludes the greater productivity largely offsets the higher wages paid to union workers); Steven G. Allen "Construction Workers are More Productive", The Quarterly Journal of Economics (May, 1984) (reports the result of a comprehensive econometric study indicating that unionized construction workers are between 29% and 51% more productive than their nonunion counterparts); Clinton C. Bourdon and Raymond E. Levitt, A Comparison of Wages and Construction, Massachusetts Institute of Technology, Research Report No. R-78-3 (describes various factors found to contribute to higher productivity among union workers).

73. Steven G. Allen and David Reich, A Case Study of Public School Construction Costs, Center To Protect Workers' Rights (1980). See U.S. Department of Housing and Urban Development Evaluation of the High Cost of Indian Housing at 23-27, (1979) ("In order to assess how great an effect high wages have on project costs, [HUD] examined the Davis-Bacon wage rates applicable to each project and compared wage rates with dwelling construction costs ... A comparison of average wage rates with average dwelling construction costs shows no correlation between high wages and high construction costs.")

74. International Union of Operating Engineers, High Wage vs. Real Cost Analysis: Wage Rate vs. Productivity Report Update (1991).

75. HUD Office of Inspector General, HUD Audit Report On Monitoring and Enforcing Labor Standards at 13.

76. Id.

77. Congressional Budget Office, Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget (1983).

78. Workplace Economics, Inc., Preliminary Review of Congressional Budget Office Costs Estimates of the Davis-Bacon Act 7 (1986).

79. *Id.*

80. *Statement of Robert D. Reischauer, Director, Congressional Budget Office, submitted to Subcomm. on Labor Standards of the House Comm. on Education and Labor at 3 (May 4, 1993).*

81. *134 Cong. Rec. H2827 (1988).*