



NEWS RELEASE

Arizona House of Representatives

Representative Matt Gress (R-4)

1700 West Washington • Phoenix, Arizona • 85007

Friday, March 15, 2024

FOR IMMEDIATE RELEASE

Representative Matt Gress Responds to Governor Hobbs’ Criticism of Bill that Protects Arizona Businesses Against Unfounded Threats & Federal Overreach

STATE CAPITOL, PHOENIX – Arizona State Representative Matt Gress is responding to criticism that Governor Katie Hobbs made of his Floor amendment to HB 2209, House-passed legislation that protects Arizona businesses from federal overreach and unwarranted interference in workplace inspections and union activities. Governor Hobbs aired her grievances in a selectively issued press release, instead of addressing them directly with Representative Gress.

In a letter to the Governor, Representative Gress counters the Governor’s claims, which appear to be based on unfounded concerns of a federal bureaucrat, explaining in detail that the bill is designed to preserve Arizona’s right-to-work laws, protect businesses from unnecessary financial and safety liabilities, and maintain workplace security without succumbing to external pressures, including a rule proposed by the Biden Administration.

Representative Gress urges the Governor to reconsider her stance and support the bill’s passage in the Senate to safeguard Arizona businesses and workers’ rights.

A copy of his letter is attached below.

Matt Gress is a Republican member of the Arizona House of Representatives serving Legislative District 4 in Phoenix. He also serves as Chairman of the House Appropriations Subcommittee on Budgetary Funding Formulas. Follow him on X/Twitter at @MatthewGress.

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CAPITAL REVIEW

March 15, 2024

Via email and hand-delivery

Katie Hobbs
Governor of Arizona
1700 W. Washington St., 9th Floor
Phoenix, Arizona 85007

**Re: Supporting House Bill 2209 (industrial commission of Arizona; continuation)
and Arizona Businesses Against Unfounded Threats & Federal Overreach**

Dear Governor Hobbs,

I write today in response to your recent press release voicing opposition to my Floor amendment to House Bill ("H.B.") 2209. I find it puzzling that the press release contained quotes from several of my Democratic colleagues and was issued on February 29, 2024—the very same day that the House voted on the bill. I was not aware of your press release until last week. If I had been given an opportunity to address your misplaced concerns about my Floor amendment, I would have met with you or any member of your staff to discuss the bill. That approach certainly would have been more productive than engaging in partisan politics over a bill that should be non-partisan and is designed to protect Arizona businesses.

In any event, the House amended H.B. 2209 and it is now working its way through the legislative process in the Senate. As the Governor of Arizona, I urge you and my colleagues in the Senate to support H.B. 2209, instead of endorsing federal overreach through the unfounded intimidation tactics of a federal bureaucrat, T. Zachary Barnett, employed by the U.S. Department of Labor Occupational Safety and Health Administration ("OSHA").

As thoroughly explained below, Mr. Barnett's letter of February 27, 2024, does not provide any legitimate reason for opposing H.B. 2209. Contrary to the assertion in your press release that the bill "threatens federal takeover of Arizona workplace inspections," H.B. 2209 will prevent potential safety and financial liability from union organizers, outside agitators, and other third parties who may enter Arizona workplaces with accompanying state OSHA inspectors. Barnett's letter fails to address the very real threats that H.B. 2209 is designed to prevent. As you know, Arizona is a right-to-work state. H.B. 2209 maintains the rights of workers to decide for themselves about union representation, protects Arizona businesses from excessive costs and injury claims and infringement upon their property rights, and promotes safety during worksite inspections.

1. H.B. 2209 Is Consistent with 40 Years of Interpretation of Federal Law and Seeks Only to Mitigate the Harm from a Union-Backed Expansion of OSHA Practices Proposed by the Biden Administration.

Mr. Barnett's letter threatens that the federal government could consider Arizona's OSHA program as being not "as effective" as the federal OSHA program if Arizona merely adopts a provision that is consistent with what has been the interpretation of federal policy for the past 40 years. *Barnett letter* at 2-3. Since the enactment of the Federal OSHA law in the 1970's, union representatives have had the right to accompany OSHA inspectors when the workers have chosen the union to be their representative. H.B. 2209 preserves that interpretation.

The Biden Administration, however, in a dramatic and dangerous change to benefit unions, has *proposed*—but not yet *adopted*—a new rule that would allow union officials to enter workplaces with OSHA inspectors even when the workers have exercised their rights not to be represented by a union.¹ This proposal would even allow multiple, competing unions who want to represent workers at a business to be present during OSHA inspections. The proposed change could also allow others who assert that they represent workers, such as community organizers, environmental activists, class action lawyers, or other advocates, to accompany OSHA inspectors to gain admittance to inspect private property workplaces.

If OSHA proceeds with its plan to change its interpretation of federal law, after 40 years of precedent, to mandate that outside union representatives, community activists, or other outsiders are able to accompany OSHA inspectors in entering workplaces, H.B. 2209 would allow an outsider into workplaces with OSHA inspectors—provided that the outsiders observe very reasonable safety and security precautions that the Director of Arizona Division of Occupational Safety and Health ("ADOSH") and the Compliance Officer would evaluate and determine from the factors in H.B. 2209. *See H.B. 2209* at 2-3.

2. Mr. Barnett's Criticism of H.B. 2209's Definition of "Authorized Employee Representative" Is Baseless Because H.B. 2209 Mirrors Federal Law.

Under existing federal regulations, the authorized employee representatives who have a right to accompany OSHA inspectors are required to be labor unions that actually represent the workers of the business being inspected. The federal regulation defines "authorized employee representative" as "a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees who are members of the collective bargaining unit." 29 C.F.R. § 2200.1(g).

H.B. 2209 is entirely consistent with the above federal definition of the authorized employee representative. *See H.B. 2209* at 2, lines 37-40 (amending A.R.S. § 23-408(F)(3)). Mr. Barnett erroneously asserts that "[t]he term 'authorized employee representative['] is not defined" by federal OSHA. *Barnett letter* at 2. His assertion is wrong as a matter of law.

¹ *See* <https://www.federalregister.gov/documents/2023/08/30/2023-18695/worker-walkaround-representative-designation-process> (Proposed Rule on "Worker Walkaround Representative Designation Process").

3. H.B. 2209 Would Enable Businesses to Protect Their Trade Secrets If Outsiders Are Allowed to Accompany Arizona OSHA Inspectors.

H.B. 2209 would give Arizona employers the right to require outsiders who accompany OSHA inspectors to provide executed confidentiality agreements to protect the trade secrets and confidential information that the outsiders view when accompanying OSHA inspectors. OSHA law has always given employers the right to inform OSHA inspectors of the trade secrets and take steps to protect it when the OSHA inspectors will be viewing or learning confidential, proprietary and trade secret information due to their entry into the workplaces for inspections so that information about those confidential, proprietary matters will be kept secret in OSHA's files. 29 C.F.R. § 1903.9.

The law has long recognized that OSHA inspections could expose confidential manufacturing processes and other trade secrets that should not be exposed to third parties. Yet Mr. Barnett takes exception to allowing Arizona businesses to protect their valuable intellectual property from exposure to the outsiders that OSHA may allow to accompany OSHA inspectors, without any safeguards for the businesses to prevent the disclosure. Mr. Barnett's position contradicts Federal OSHA's position and statute regarding an employer's right to identify and protect trade secrets. Further, Mr. Barnett fails to address this important protection, which is a glaring gap in the Biden Administration's proposed rule. *See supra*, n.1.

Without H.B. 2209, it would be easy for industrial espionage to occur by someone posing as or working in collaboration with an activist to accompany an OSHA inspector. OSHA inspections involve much more than viewing the inside of a workplace. OSHA inspections can involve photographing the confidential and proprietary manufacturing processes of Arizona businesses, learning the chemical ingredients and formulas used in manufacturing processes, interviewing and recording workers without the presence of management, and even taking samples of materials and ingredients. Without H.B. 2209, highly confidential, proprietary and trade secret information could be obtained by the outsiders who will participate in the OSHA inspections and those outsiders could disclose or sell Arizona businesses' confidential information to competitors, foreign and domestic.

4. H.B. 2209 Would Enable Businesses to Preserve Safety During Inspections That Include Outsiders in the Workplace.

H.B. 2209 would also promote workplace safety. It enables businesses to require the outsiders who accompany OSHA inspectors to follow safety procedures, wear safety equipment, have safety training, and have insurance coverage to prevent claims against the business for alleged injuries that could arise out of their intrusion and presence into the workplace.

These safety safeguards are appropriate for outsiders to be admitted to workplaces that may contain hazardous activities. Conducting inspections can be a hazardous activity because the persons doing the inspections are in unfamiliar surroundings that can include operating machinery and equipment, access to hazardous locations, and other activities for which inspectors should be qualified and experienced to avoid risks of injuries. The safety precautions authorized by H.B.

2209 are similar to safeguards that businesses already utilize for subcontractors and vendors who have personnel who enter other businesses' worksites.

Notably, Mr. Barnett's letter fails to address at all the topic of who pays for any injury that arises from a third party who is present during an inspection. In fact, Mr. Barnett asserts there should be more than one third party allowed to be present during an OSHA inspection, which increases exposure (both financially and as a matter of safety) to an employer and to the private property owner. *See Barnett letter at 2.*

Mr. Barnett also fails to address whatsoever what insurance, or workers compensation with additional insured coverage for the employer, would be available during an OSHA inspection if the third party is injured. In addition, what potential financial responsibility does the Director of ADOSH or Compliance Officer have if they authorize third parties to be present on private parties and injuries or accidents occur?

5. H.B. 2209 Will Reduce Abuses from Unions, Outsiders, And Third Parties Using OSHA as a Tactic in "Corporate Campaigns" to Punish Businesses Whose Workers Choose Not to Be Represented by a Union.

Mr. Barnett's letter also ignores the proverbial "elephant in the room." In the real world, the issue addressed by H.B. 2209 is that labor unions seek to force unionization upon workers by coercing businesses to recognize the labor unions without allowing workers to vote on whether they choose to be represented by the union. Rather than seeking a union election, unions embark on so-called "corporate campaigns" against the businesses until they surrender to pressure from the unions.

The corporate campaigns use government investigations, lawsuits, photos, disparagement on social media, and other tactics to harass and inflict costs upon businesses until the business can no longer withstand the disruption and expense of combatting the union's corporate campaign and agrees to recognize the union and sign a union contract in order to bring an end to the attacks upon the business, without ever allowing the workers to vote on union representation of them.

The proposed federal OSHA rule would expand the role of unions by mandating that outsiders, such as union officials and other third parties, could accompany OSHA inspectors. That is intended to give unions and outsiders a powerful new tool to harass businesses that they have targeted. The union officials and third parties participating in OSHA inspections could allege that they suffered an injury during the inspection and bring claims against the business. H.B. 2209 would enable businesses to require that there is insurance to cover such claims, similar to insurance requirements commonly used for subcontractors. *See H.B. 2209 at 3.*

The unions could also use self-styled, so-called environmental activists, consumer advocates, and community organizers as allies in their attacks on businesses by enlisting their participation in OSHA inspections to raise issues and allegations that would inflict additional costs upon businesses. How would ADOSH protect a Company's photos, trade secret information, confidential information, and even personnel information if groups of third parties are allowed on

to private property to take photos and videos and disseminate publicly? The proposed rule clearly goes too far and is not in Arizona's best interests.

6. Mr. Barnett's Letter Neglects to Mention the Process Entailed for Federal Recognition of Arizona's State OSHA Plan.

Arizona, like roughly half of the States, enforces the Federal OSHA law pursuant to a federally-approved State OSHA Plan. Mr. Barnett's enforcement authority, as Federal OSHA's Area Director for Arizona, is limited to military bases and Native American lands. Yet Mr. Barnett—who plainly does not have legal authority to make determinations about State OSHA plans—threatens that OSHA will consider Arizona's State OSHA Plan as not being as effective as Federal OSHA enforcement if H.B. 2209 is adopted.

The process for OSHA to approve, disapprove or revoke State OSHA Plans involves OSHA publishing notice of a proposal in the Federal Register to initiate proceedings about the future of a State OSHA Plan. The public and interested parties then have the right to submit information, evidence and comments about the State Plan. After the time for submission of information, OSHA must then consider all of the submissions before reaching a decision based on the evidence and information.

Because none of these steps have occurred, Mr. Barnett's statement that "we have determined" that H.B. 2209 would render the Arizona State OSHA Plan to be not as effective as federal OSHA enforcement is not entitled to any consideration or weight. At most, Mr. Barnett's letter undermines the objectivity of a possible future process that Federal OSHA might initiate by implying that OSHA has already made up its mind before H.B. 2209 has even been enacted or implemented, and before there has been any evidence or information submitted to OSHA in response to a Federal Register notice inviting comments on the subject.

Before OSHA could move forward with the consideration of any action against the Arizona State OSHA Plan, Arizona would have a full and fair opportunity to demonstrate its record of protecting worker safety while also being respectful of the rights of businesses. And of course, before that issue could even arise, OSHA would first have to adopt the union-backed proposal to expand the access of outsiders to participate in OSHA inspections that reverses 40 years of Federal OSHA interpretations. *See supra*, Section 1.

And even assuming the federal proposal is adopted, the new OSHA policy would also need to withstand likely lawsuits to seek to block that change in Federal OSHA policies regarding inspections in non-union workplaces. By that time, there should also be a track record in Arizona for OSHA to consider and evaluate the reasonableness of H.B. 2209 and the fact that it would not detract from worker safety, but would instead protect the legitimate rights and interests of Arizona businesses and their employees.

7. It Is Inappropriate for Mr. Barnett to Comment on the Amendments to A.R.S. § 23-108.03 and A.R.S. § 23-408(M)

Mr. Barnett appears to take issue with H.B. 2209's amendments to A.R.S. § 23-108.03 and A.R.S. § 23-408 (specifically, the addition of subsection M), yet he readily admits that Arizona has authority to regulate these procedures and oversight of ADOSH enforcement activity. *See Barnett letter* at 2-3. Because these matters are not within Mr. Barnett's OSHA jurisdiction, Mr. Barnett's comments should not be given any consideration or weight.

8. Mr. Barnett's Letter Is Simply the Latest Attempt of OSHA's Repeated Pattern of Bureaucratic Rivalry with the Arizona State OSHA Plan.

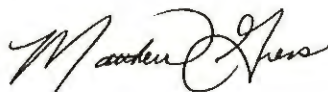
Finally, it bears emphasis that OSHA has a practice, dating back to the 1970's, of attempting to "bully" State OSHA agencies by threatening to take action against State OSHA Plans. Congress has stepped in to try to curtail OSHA's heavy-handed tactics with State OSHA Plans as early as 1980.

OSHA has made previous threats against Arizona's State OSHA Plan multiple times since the final approval of Arizona's State OSHA Plan on June 20, 1985. OSHA made allegations about the Arizona Plan in 2012, again in 2015, and most recently over COVID-related issues on April 21, 2022. Despite those repeated attacks, the federal government's efforts were closed without any action being taken to revoke the Arizona State OSHA Plan.

It is neither surprising nor remarkable to encounter federal overreach when two government regulatory agencies, one State and one Federal, share responsibility for inspection and enforcement activity. That is the inherent nature of relations between Washington, D.C. and State governments. It should therefore come as no surprise that an Area Director for OSHA in Arizona would attempt to find fault with the much greater scope of OSHA investigation and enforcement exercised by the ADOSH. The track record of ADOSH is to be more efficient, more productive, more responsive, and more effective than OSHA enforcement elsewhere.

In conclusion, I urge you not to be distracted, deterred, or intimidated by the unfounded opinions expressed in Mr. Barnett's letter. Instead, you should reconsider the comments in your press release, stand with Arizona businesses in support of H.B. 2209, and encourage all legislators to vote in favor of H.B. 2209.

Sincerely,



Representative Matt Gress
Legislative District 4

Letter to Governor Hobbs

March 15, 2024

Page 7 of 7

cc (via email):

Industrial Commission of Arizona Director Gaetano Testini

Speaker of the Arizona House of Representatives Ben Toma

Arizona State Senate President Warren Petersen

Representative David Livingston

Senator J.D. Mesnard

Senator Shawna Bolick

Senator David Gowan

Senator Janae Shamp

Senator Lela Alston

Senator Denise "Mitzi" Epstein

Senator Brian Fernandez

Senator Jake Hoffman