

# KEY VOTE ALERT!

February 28, 2017

TO THE MEMBERS OF THE UNITED STATES CONGRESS:

**The U.S. Chamber of Commerce supports H.J. Res. 83, which would invalidate the regulation issued by the Occupational Safety and Health Administration (OSHA) entitled “Clarification of an Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness,” and will consider including votes related to it in our 2017 *How They Voted* scorecard.**

The rule would have the effect of extending to five years the statute of limitations on recordkeeping violations that the Occupational Safety and Health Act sets at six months. It was OSHA’s attempt to negate a 2012 decision from the D.C. Circuit Court of Appeals involving a construction company known as *Volks Constructors*. The decision blocked OSHA from sustaining citations for recordkeeping violations that occurred beyond the six month statute of limitations specified in the Occupational Safety and Health Act. The court’s unanimous 3-0 ruling included Judge Merrick Garland.

The court unequivocally rebuked OSHA, expressing particular concern on the agency’s overstepping its authority: “We do not believe Congress expressly established a statute of limitations only to implicitly encourage the Secretary to ignore it... The Act clearly renders the citations untimely, and the Secretary’s argument to the contrary relies on an interpretation that is neither natural nor consistent with our precedents.” The *Volks* decision has since been endorsed by the Fifth Circuit in the *Delek* decision, issued in December 2016, where the court found “its reasoning persuasive.”

OSHA’s *Volks* Rule will improperly subject millions of American businesses to citations for paperwork violations, while doing nothing to improve worker health and safety. It simultaneously represents a usurpation of Congress’ power to write the laws and a direct rejection of the judicial branch’s authority to rein in an agency when it exceeds its authority.

The Chamber urges you to vote in favor of H.J. Res. 83, to invalidate OSHA’s *Volks* regulation and restore the statute of limitations for citations enacted by Congress.

Sincerely,



Jack Howard



U.S. CHAMBER OF COMMERCE  
Congressional & Public Affairs  
1615 H Street, NW  
Washington, DC 20062

202-463-5600