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REGULATION was first published in July 1977 "because the extension of regulation is piecemeal, the sources and targets diverse, the language complex and often opaque, and the volume overwhelming."
REGULATION is devoted to analyzing the implications of government regulatory policy and the effects on our public and private endeavors.

For the Record

Velma Montoya (Ph.D.), a former member of the Occupational Safety and Health Review Commission (OSHRC), wrote "OSHA Review Commission's E-Z Trial: Backdoor Authoritarianism?" (Regulation, *Vol. 21, No. 3).* Inside OSHA, *a biweekly publication of Inside Washington Publishers, printed a lengthy rebuttal by Stuart E. Weisberg, then chairman of OSHRC. Dr. Montoya responds:*

Mr. Weisberg implies that I argued for costly, conventional proceedings over E-Z Trial. In fact, I rejected E-Z Trial in favor of a return to the simplified proceedings (SP) option displaced by E-Z Trial. SP was far superior because (1) SP was wholly voluntary rather than being forced on employers, (2) after 1992 the secretary of labor could not veto the employer's choice of SP, and (3) SP explicitly excluded precedent-setting cases involving OSHA's more complex regulations.

E-Z Trial forces small employers facing complex issues into a precedent-setting procedure in which OSHA is well represented and most employers are not, a point Mr. Weisberg ignores.

And the process of deciding who may opt out of E-Z Trial is inherently authoritarian. OSHRC's chief administrative law judge (who serves at the pleasure of the OSHRC chairman) has total (and subjective) control of case assignments to E-Z Trial. Unlike all earlier simplified procedures dating back to 1980, there are *no* specific eligibility criteria for E-Z Trial; any case coming before OSHRC can be mandated for E-Z Trial, despite Mr. Weisberg's tranquilizing assurances.

Mr. Weisberg argued that I cited "a single case, *R.P. Carbone Construction Co.*, to show the pitfalls of E-Z Trial for small businesses." But *Carbone* demonstrates the arbitrariness of E-Z Trial. The judge's decision, in a rushed, "this is only an E-Z Trial" tone, gave no rationale for allowing hearsay evidence in the E-Z Trial and did not refer to the Federal Rules of Evidence, which allow hearsay evidence only in specified circumstances.

Carbone's lawyer appealed to OSHRC for a review of the case, arguing that the hearsay evidence was inadmissible. By refusing to review the case, OSHRC was able to report that the case was resolved quickly. But, sadly, OSHRC's "gain" was at Carbone's expense. Carbone spent thousands to secure the pertinent, suitably narrow, rationale from the circuit court.

Mr. Weisberg inadvertently admitted that the rate at which cases go to a hearing rather than settle is 36 percent higher under E-Z Trial than it was under SP. He then dismissed that increase, as if the typically harried small business owner treats a "day [sic] in court" as light amusement.

Mr. Weisberg's incomplete and misleading rebuttal should not divert attention from his antibusiness record; specifically, of 114 OSHRC decisions in which Mr. Weisberg participated, he came down on the employer's side 11 times. Such an antibusiness attitude ultimately hurts workers. When OSHA compliance officers abuse their authority by issuing unfair citations and OSHRC routinely affirms such citations, the additional litigation costs and fines imposed on businesses constitute a harassment tax on the hiring of workers. Employers rationally respond by passing the costs on to workers by offering them lower wages or benefits—or both.

VELMA MONTOYA
President, National Council of Hispanic Women

We welcome notes about current regulatory topics, letters that challenge or expand upon material we have published, and replies from authors. The writer's name, affiliation, address, and telephone number should be included. We cannot publish all the letters we receive, and we may reject any letter at our discretion. We may edit letters for length, clarity, and conformity to our editorial style.