AFL-CIO

LEGISLATIVE ALERT

October 3, 2017

The Honorable Virginia Foxx
Chair
U.S. House Education and the Workforce Committee
2176 Rayburn House Office Building,
Washington, DC 20515

The Honorable Robert Scott
Ranking Member
U.S. House Education and the Workforce Committee
2101 Rayburn House Office Building,
Washington, DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

On behalf of the 12 million working women and men represented by the unions of the AFL-CIO, I am writing to urge you to oppose H.R. 3441, the "Save Local Business Act."

Proponents of the legislation claim that it is designed to repeal the National Labor Relations Board's (NLRB's) 2015 decision in ***Browning Ferris Industries***, in which the NLRB clarified its legal test for determining whether two employers are joint employers of certain employees. In fact, H.R. 3441 rolls back worker protections so they are weaker than when Congress adopted the National Labor Relations Act in 1935 and the Fair Labor Standards Act in 1938. It is harmful legislation that will undermine workers' pay and protections on the job.

Browning Ferris concerned a group of workers on a recycling line at a facility owned and operated by Browning Ferris. The workers were supplied by a staffing agency – Leadpoint. Browning Ferris controlled the facility, set the hours of operation, dictated the speed of the recycling line, indirectly supervised the line workers, and had authority over numerous other conditions of employment. In order to ensure that the employees' right to form a union and bargain over workplace issues was protected, the NLRB held that Browning Ferris was a joint employer of the line workers along with Leadpoint. This fact-intensive decision reflected the realities of the arrangement at Browning Ferris and was rightly decided in order for the line workers to have a meaningful right to bargain over their terms and conditions of employment.

Before the ink was dry on the ***Browning-Ferris*** decision, business groups and Republicans in Congress began attacking the decision, claiming it dramatically changed the law and undermined the franchise business model. (Browning Ferris is not a franchise case, a fact specifically noted by the NLRB in its decision).

In our view, these attacks on the ***Browning Ferris*** decision are overblown and misguided. In today's fragmented workplaces, with perma-temps, contracted workers, agency employees, and subcontracting becoming ever more prevalent, it is more important than ever to make sure our laws protect workers and ensure they receive the wages they are due and that their right to join with their co-workers to bargain for improvements on the job is protected.

H.R. 3441 takes the law in the opposite direction, radically changing both the National Labor Relations Act and the Fair Labor Standards Act by instituting a new test for finding employers to be joint employers that is more restrictive than any agency or court has ever adopted. As a practical matter, the legislation eliminates joint employment from the NLRA and the Fair Labor Standards Act, meaning that many workers in subcontracting or staffing agency arrangements will be left without recourse for wage theft and will have no meaningful bargaining rights. The bill weakens worker protections and allows corporations to evade their responsibilities under the law.

We urge you to reject this harmful and misguided proposal.

Sincerely,

William Samuel, Director
Government Affairs Department

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cc: House Education and the Workforce Committee Members