SWACCA

October 5, 2017

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker and Leader Pelosi:

I am writing on behalf of the Signatory Wall and Ceiling Contractors Alliance (SWACCA) to express our strong opposition to H.R. 3441, the "Save Local Business Act." This legislation will not benefit honest small businesses that create good jobs with family-sustaining wages and benefits. It will actually place such employers at a permanent competitive disadvantage to unscrupulous companies that seek to thrive solely at the expense of their workers and taxpayer-funded social safety-net programs.

SWACCA is a national alliance of wall and ceiling contractors committed to working in partnership with our workers and our customers to provide the highest-quality, most efficient construction services. Through the superior training, skill, and efficiency of our workers SWACCA contractors are able to provide both cost-effective construction services and middle class jobs with health and retirement benefits. Our organization prides itself on representing companies that accept responsibility for paying fair wages, abiding by health and safety standards, workers compensation laws, and unemployment insurance requirements.

Unfortunately, however, we increasingly find ourselves bidding against companies that seek to compete solely on the basis of labor costs. They do so by relieving themselves of the traditional obligations associated with being an employer. The news is littered with examples of contractors who have sought to reduce costs by willfully violating the laws governing minimum wage, overtime, workers compensation unemployment insurance, and workplace safety protections. The key to this disturbing business model is a cadre of labor brokers who claim to provide a company with an entire workforce that follows them to job after job. It is a workforce that the actual wall or ceiling contractor controls as a practical matter, but for which it takes no legal responsibility. In this model workers receive no benefits, are rarely covered by workers compensation or unemployment insurance, and are frequently not paid in compliance with federal and state wage laws. The joint employment doctrine is an important means for forcing these unscrupulous contractors to compete on a level playing field and to be held accountable for the unlawful treatment of the workers they utilize.

As an association representing large, medium, and small businesses, we oppose H.R. 3441 because it proposes a radical, unprecedented re-definition of joint employment under both the FLSA and the NLRA that goes far beyond reversing the standard articulated by the NLRB in *Browning-Ferris* or retuning to any concept of joint employment that has ever existed under the FLSA since the Act's passage. H.R. 3441's radical and unprecedented redefinition of joint employment would proliferate the use of fly-by-night labor brokers by ensuring that no contractor using a workforce provided by a labor broker would ever be deemed a joint employer. This

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is because the bill precludes a finding of joint employment unless a company controls each *"of the essential terms and conditions of employment (including hiring employees, discharging employee, determining individual employee rates of pay and benefits, day-to-day supervision of employees, assigning individual work schedules, positions and tasks, and administering employee discipline)"*. H.R. 3441 goes further by expressly countenancing a company using labor brokers retaining control of the essential aspects of the workers' employment in a "limited and routine manner" without facing any risk of being a joint employer.

Simply put, H.R. 3441 would create a standard that would surely accelerate a race to the bottom in the construction industry and many other sectors of the economy. It would further tilt the field of competition against honest, ethical businesses. Any concerns about the prior administration's recently-rescinded interpretative guidance on joint employment under the FLSA or the NLRB's joint employment doctrine enunciated in *Browning-Ferris* can be addressed in a far more responsible manner. Make no mistake, H.R. 3441 does not return the law to any prior precedents or standards. It creates a radical, new standard. This standard will help unethical employers get rich not be creating more value, but instead by ensuring their ability to treat American workers as a permanent pool of low-wage, subcontracted labor that has neither benefits nor any meaningful recourse against them under our nation's labor and employment laws.

On behalf of the membership of SWACCA, thank you in advance for your attention to our concerns about this legislation. Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Timothy J. Wies
President

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