May 4, 2023

The Honorable Virginia Foxx Chair, Committee on Education & the Workforce U.S. House of Representatives Washington, D.C. 20515	The Honorable Robert Scott Ranking Member, Committee on Education & the Workforce U.S. House of Representatives Washington, D.C. 20515

Dear Chair Foxx and Representative Scott:

We are writing on behalf of the members of the Signatory Wall and Ceiling Contractors Alliance (SWACCA) and FCA International to express our continued opposition to H.R. 2826, the "Save Local Business Act." Rather than benefitting our nation's entrepreneurs, the changes this legislation makes to the "joint employment" standard under both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) will place law-abiding employers competing on the basis of quality services, efficient execution, worker training, and innovation, at a competitive disadvantage to businesses that thrive at the expense of honest job creators, American workers, and the nation's taxpayers.

SWACCA and FCA International are national, non-profit trade associations that advocate for the interests of signatory wall and ceiling and finishing industry employers. We represent contractors who perform commercial framing, drywall, painting, coatings, interior systems, architectural glass and metal, and flooring work nationwide. Our organizations are proud to represent contractors that accept responsibility for providing family-sustaining wages and benefits and abiding by labor and employment standards, workers' compensation laws, unemployment insurance requirements, and federal and state employment tax obligations.

In today's economy, our members increasingly find themselves competing with companies that seek to reduce costs by dissociating themselves from the traditional obligations of being an employer. Over the past several years, the COVID-19 pandemic accelerated the push for contractors to reduce costs by structuring operations to evade paying minimum wage, overtime, unemployment insurance, and other significant expenses in a labor-intensive industry. H.R. 2826 seeks to provide a safe harbor for proponents of this false employer model built on a cadre of labor brokers providing an entire workforce of subcontractors on job after job. It is a workforce that gets no benefits and for whom every tier of a construction contracting chain claims to have no responsibility for paying overtime, workers' compensation, employment taxes, or unemployment insurance. Even under the law as it exists today, general contractors and higher-tier subcontractors find it worth the risk to claim that the workforces provided by such labor brokers are either independent contractors or just the workforce of the labor broker. We are therefore concerned that in redefining "joint employer" under the NLRA and FLSA, H.R. 2826

would make it even less likely that the fictions upon which this business model rests will ever be challenged.

Recent academic research confirms the costs this construction industry business model imposes on honest contractors, workers, and taxpayers.[1] Worker misclassification and other types of payroll fraud in construction allow employers to evade $2.98 billion per year in Social Security and Medicare taxes for workers.[2] It causes an estimated $1.74 billion annual shortfall in state workers compensation programs. Construction industry misclassification results in annual state unemployment insurance program shortfalls of over $700 million.[3] Under the "most conservative" estimates, misclassified construction workers lose over $800 million per year in overtime.[4] In the 116th Congress, testimony before the Subcommittee on Workforce Protections confirmed that construction companies relying on layers of labor brokers using misclassified workers can save almost 50% compared to companies that honor their obligations as employers.[5] The expanding scope of this problem in the construction industry was reconfirmed during an April 19, 2023 House Education and Workforce Committee, Subcommittee on Workforce Protections hearing.[6]

H.R. 2826 is ostensibly a response to the NLRB's 2015 decision in the *Browning-Ferris Industries of California, Inc.* case and the Labor Department's (DOL) recent rescission of the prior Administration's joint employer guidance at the Department of Labor. But it is far more radical than a mere attempt to undo *Browning-Ferris* and to reinstate the recently rescinded DOL interpretation. Instead, the bill's narrow definition of joint employment under both the NLRA and FLSA would provide complete safety for business models built upon the misclassification of construction workers as independent contractors. As such, the "Save Local Business Act" is not about protecting companies making hard calls applying unclear law to vague facts. It represents an effort to advantage one business model over another and an endorsement of a model promoting profits over the interests of America's workers, taxpayers, and construction companies working hard to create middle class jobs and train the next generation of skilled construction craft workers. In sum, this legislation exemplifies the wrong choices as our nation continues to recover from the economic hardships of the COVID-19 pandemic.

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[1] Russell Ormiston, Dale Belman and Mark Erlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry* (2020), available at https://stoptaxfraud.net/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-for-Wage-and-Tax-Fraud-Report-FINAL.pdf (last visited April 27, 2023).

[2] *Id.* at 5.

[3] *Ibid.*

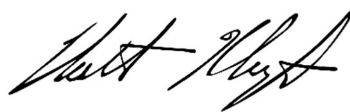
[4] *Ibid.*

[5] Hearing on "Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy" Before the Workforce Protections Subcommittee, House Education and Labor Committee, 116th Congress (Sept. 26, 2019) (Statement of Matt Townsend, President of the Signatory Wall and Ceiling Contractors Alliance at 3, available https://www.congress.gov/116/meeting/house/110019/witnesses/HHRG-116-ED10-Wstate-TownsendM-20190926.pdf (last visited April 27, 2023).

[6] Hearing on "Examining Biden's War on Independent Contractors" Before the Workforce Protections Subcommittee, House Education and Labor Committee, 118th Congress (April 19, 2023) (Statement of David Long, CEO of the National Electrical Contractors Association, available at https://edworkforce.house.gov/uploadedfiles/long_testimony.pdf)

On behalf of the membership of SWACCA and FCA International, thank you in advance for your attention to our concerns about this legislation.

Sincerely,



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CC: Members, House Committee on Education & the Workforce