SWACCA®

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May 19, 2021

The Honorable Robert Scott
Chair, Committee on Education & Labor
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Virginia Foxx
Ranking Member, Committee on Education & Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chair Scott and Ranking Member Foxx:

I am writing on behalf of the Signatory Wall and Ceiling Contractors Alliance (SWACCA) to express our continued opposition to H.R. 3185, the "Save Local Business Act." Rather than benefitting our nation's entrepreneurs, this legislation's revisions to the "joint employment" standard under both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) will place 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 workers and American taxpayers.

SWACCA is a national, non-profit trade association that advocates for the interests of signatory wall and ceiling construction industry employers. SWACCA represents approximately 400 wall and ceiling construction employers who perform commercial framing, drywall, and interior systems work nationwide. Our members employ thousands of carpenters, drywall finishers, plasterers, and other skilled building trades professionals throughout the United States. SWACCA is proud to represent contractors that accept responsibility for providing family-sustaining wages and benefits and abiding by labor and employment standards, workers' compensation laws, and unemployment insurance requirements.

In today's economy, SWACCA 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 course of the past year, 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. 3185 seeks to provide a safe harbor for proponents of this race-to-the bottom business 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, or unemployment insurance. Even under the law as it exists today, businesses 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. 3185 would make it even less likely that the fictions upon which this business model rests will ever be challenged.

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Recent academic research confirms these costs of this business model to 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] Last Congress, testimony before the House Education and Labor 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]

H.R. 3185 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 repeal of the independent contractor rule. But it is far more radical than a mere attempt to undo *Browning-Ferris* and to reinstate the recently rescinded DOL regulation. 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 those companies working hard to create middle class jobs. In sum, this legislation exemplifies the wrong choices as our nation fights to come back from the economic hardships of the COVID-19 pandemic.

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

Sincerely,

Scott Casabona
President

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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 March 29, 2021).
[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 at https://edlabor.house.gov/imo/media/doc/TownsendTestimony092619.pdf, last visited March 23, 2021).