



October 27, 2015

The Honorable John Kline  
Chairman, House Committee on Education and  
the Workforce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Bobby Scott  
Ranking Member, House Committee on  
Education and the Workforce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Kline and Ranking Member Scott,

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 21,000 chapter members, I am writing in regard to Wednesday's Education and Workforce Committee markup of H.R. 3459, the "Protecting Local Business Opportunity Act." This bill will restore the "joint employer" standard that has been in place for over 30 years and bring stability back into the economy for contractors and subcontractors across the country. We appreciate your consideration of this important issue and we urge the rejection of any amendments submitted to weaken this legislation.

On August 27, 2015, the National Labor Relations Board (Board or NLRB) issued its decision in *Browning-Ferris Industries* altering the "joint employer" standard under the National Labor Relations Act. The standard is used to determine when two separate companies are considered one employer with respect to a group of employees for purposes of liability and bargaining obligations under the National Labor Relations Act (NLRA). Prior to this decision, companies were only deemed joint employers when they both exercised "direct and immediate" control over the "essential terms and conditions of employment." In *Browning-Ferris*, however, the Board overturned 30 years of precedent to impose a new standard expanding the definition to include those employers who have "indirect" control and "unexercised potential" control.

H.R. 3459 would clear up the uncertainties surrounding the *Browning-Ferris* decision and return the NLRA's definition of joint employer to instances in which an employer has control over the terms and conditions of employment in an "actual, direct and immediate," manner with another employer. This legislation would help keep in place a successful business model and protect the ability to hardworking Americans to achieve the American dream of owning their own business.

We thank you again for scheduling this markup to address this important issue and look forward to working with Congress to ensure locally owned businesses and their employees are protected.

Sincerely,

Kristen Swearingen  
Senior Director, Legislative Affairs