



**National Association of Home Builders**

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October 27, 2015

**Government Affairs**

James W. Tobin III  
Executive Vice President & Chief Lobbyist  
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The Honorable John Kline  
Chairman  
House Education & the Workforce Committee  
U.S. House of Representatives  
2439 Rayburn House Office Building  
Washington, DC 20515

The Honorable Robert Scott  
Ranking Member  
House Education & the Workforce Committee  
U.S. House of Representatives  
1201 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Kline and Ranking Member Scott:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I write in strong support of the *Protecting Local Business Opportunity Act* (H.R.3459), which would restore the traditional definition of joint employment at the National Labor Relations Board (NLRB). NAHB urges the House Education and Workforce Committee to favorably report H.R. 3459 to the House of Representatives.

The NLRB's contentious decision in *Browning Ferris* expanded the test for finding joint employer status. Under the decision, a company is a joint employer if it has the *potential* right to control or co-determine the essential terms of an employee's employment, including hiring and firing, discipline, supervision, scheduling, seniority and overtime, and assigning work and determining the means and methods of performance. This is a radical departure from the traditional standard of "direct control." *Browning Ferris*' biggest impact on home builders and their contractors will be in three areas: the use of staffing agencies, secondary boycotts, and union organizing.

The determination of joint employment is especially important for home builders. The dominance of small business entities in the residential construction sector illustrates the necessity of the independent contractor business model in the industry. Eighty percent of NAHB's builder members have less than ten employees and build less than ten homes annually. For most builders, there is simply not sufficient internal demand to justify hiring an employee for the numerous specialized tasks required to complete a home project. Consequently, builders rely on an average of twenty-two subcontracting firms to build a home, including framers, roofers, electricians and other types of specialty trades. Without these independent contractors, many family-owned small businesses would simply cease to be viable operations.

NAHB believes the *Browning Ferris* decision will be damaging to the marketplace and housing affordability. The "potential" control standard adopted by the NLRB will lead to centralization of the industry and contribute to higher housing prices.

For these reasons, NAHB urges the House Education and Workforce Committee to favorably report H.R. 3459 in its current form and oppose any amendments that would undermine its workability for employers. Congress should consider this legislation without delay.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Tobin III". The signature is fluid and cursive, with a prominent initial "J" and "T".

James W. Tobin III

Cc: All members of the House Education & the Workforce Committee.