Opening Statement of Representative Donald Norcross
Committee on Education and Workforce
Workforce Protections & HELP Joint Subcommittee Hearing on
H.R. 3441, "Save Local Business Act."
Wednesday September 13, 2017 - 10 a.m.

Thank you Chairmen Byrne and Walberg for holding this hearing today. And I would like to thank my colleague, Ranking Member Mark Takano for all you do on behalf of working families.

I would like to start by offering my thoughts and prayers to the people of Texas, Florida, and all the states impacted, particularly those who lost loved ones as well as those who remain displaced. I know I speak for my Democratic colleagues in stating that we stand ready to work with you to ensure that the affected states have the resources they need to recover and rebuild.

Today we consider a bill that attacks workers' rights to fight for better wages and conditions. Employers have increasingly moved away from direct hiring, relying on leased employees, subcontractors, and perma-temps. Approximately 3 million Americans are now employed by

temporary staffing agencies, and one fifth of all new jobs since 2009 have been through temp agencies.

Labor and employment laws have long held workers have multiple, "joint employers" when more than one entity controls the terms and conditions of employment. This bill would rig the National Labor Relations Act and the Fair Labor Standards Act to make it nearly impossible for workers to hold joint employers responsible for unfair labor practices or wage theft. Research shows that the fissuring of the workforce through increased outsourcing is already contributing to wage stagnation, and this bill would make the problem even worse.

The joint employer standard that exists today is based on a common law standard that has existed for hundreds of years. In America, the standard that existed through most of the twentieth century did exactly what it was intended to. But when the NLRB narrowed the joint employer standard under the NLRA in 1984 it made it easier for companies to evade joint employer status.

In 2015, the National Labor Relations Board considered a case where workers at the Browning Ferris (BFI) recycling plant wanted to organize a union. These workers were hired by the staffing agency Leadpoint to sort recyclable materials at BFI's facility, but BFI capped their wages and assigned the workers' shifts. BFI claimed it wasn't an employer, but here's the problem: if the workers joined a union with Leadpoint as the only employer, then Leadpoint wouldn't be able to bargain over anything without BFI's permission. The workers wouldn't even be able to bargain for better wages, because the amount Leadpoint could pay was capped by BFI. The NLRB's finding that BFI was a joint employer is critical for these workers to raise their wages.

[Referencing the chart:] Let's look at what actually happened. This table compares what the subcontracted Leadpoint workers were making with the wages of workers at nearby plants that have unions. The union workers nearby make anywhere from $19 to $30 an hour, plus healthcare and retirement savings. The Leadpoint workers only make $12.50 an hour

with no wages and benefits. Without being able to bargain with both of their employers, the Leadpoint/BFI workers, and hundreds of thousands like them, will never see their wages rise. And this isn't the only example - we have seen similar trends in the telecom and construction industries.

Mr. Chairman, I ask unanimous consent to introduce this document into the record.

The right to join a union and collectively bargain helps workers raise wages. I've lived this—I fought on behalf of workers to raise wages for over two decades. This bill enables corporations to keep wages low by subcontracting out their work. They are subcontracting their consciences to put profits over people.

This bill goes even further. It amends the Fair Labor Standards Act to prevent workers from holding employers accountable for wage theft or overtime violations. It even immunizes employers from child labor violations. Under this bill, all a company has to do is outsource control

over just one essential term of employment to its subcontractors—say scheduling. The bill then relieves the company of any liability for any wage theft for which it may be responsible. Workers and businesses want stability and predictability. Instead we are giving them chaos.

The Majority [alternative: This bill] is pushing a solution in search of a problem when it claims that this bill would help franchises. The current joint employment standards do not hurt franchises in any way. There are around 800,000 franchisees in America and the NLRB has never found that one of them was a joint employer.[1] That's because the Board carefully draws a line between when a franchisor maintains its brand—like requiring training on how to prepare burgers—and when a franchisor governs terms of employment, like wages. This bill would leave countless hardworking Americans without a voice in their workplace at a time when Congress should be helping to lift up workers by raising wages and improving workplace conditions.

[1] https://www.cnbc.com/2016/01/20/us-franchises-set-to-grow-in-2016-report.html

Mr. Chairman, I'm happy to work on legislation that would help small businesses and raise wages. This bill does neither: it empowers massive corporations and stagnates wages at a time when working families need relief. We should be lifting people up, not pushing wages down.

While we disagree about the merits of this bill, I want to thank the Chairman for following regular order. I also want to thank each of the witnesses for traveling to Washington, DC, and taking the time to appear here today.

I yield back.