October 3, 2017

The Honorable Virginia Foxx
Chairwoman
Committee on Education & the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building

The Honorable Bobby C. Scott
Ranking Member
Committee on Education & the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building

Dear Chairwoman Foxx and Ranking Member Scott:

On behalf of the Economic Policy Institute Policy Center, we write to express our strong opposition the H.R. 3441, the so-called "Save Local Business Act," which would do nothing to protect small business owners or their workers. The Economic Policy Institute is a nonprofit, nonpartisan think tank founded in 1986, and our labor policy unit assesses actions by Congress and federal agencies that impact workers and the economy. We urge you to oppose this legislation.

The so-called "Save Local Business Act" (H.R. 3441) would roll back the joint employer standards under both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA). It has nothing to do with protecting small businesses. In fact, the bill would ensure that small businesses are *left with sole responsibility* for business practices often mandated by large corporations like franchisors. It would establish a joint employer standard that lets big corporations avoid liability for labor and employment violations and leaves small businesses on the hook.

Given the realities of the modern workplace, in which employees often find themselves subject to more than one employer, working people deserve a joint employer standard that guarantees their rights and protections under basic labor and employment laws. Instead, this bill would establish a standard that makes it nearly impossible for workers whose wages are stolen or who are fired for supporting a union to get justice. By limiting employer responsibility to only those firms who "directly, actually, and immediately" exercise significant control over the essential terms and conditions of employment, the bill would enable large firms that contract for services to evade responsibility under both the NLRA and the FLSA.

When two or more businesses co-determine or share control over a worker's pay, schedule, or job duties, then both of those businesses should be considered employers. A weak joint employer standard robs workers of their rights, making it impossible for them to effectively collectively bargain or litigate workplace disputes—and it leaves small businesses holding the bag when the large corporations that control their business practices and set their employees' schedules violate labor law and refuse to come to the bargaining table. If this committee wishes to support small businesses and the workers they employ, then it should support a strong joint employer standard rather than this legislation.

Since the NLRB narrowed its joint employer standard in 1984, contingent and alternative workforce arrangements—including reliance on temporary staffing firms and contractors to outsource services traditionally performed by in-house workers—have grown dramatically. Recent estimates find that 15.8 percent of workers were engaged in alternative work arrangements in late 2015, or around 24 million workers in today's labor market. [1]

The NLRB's 2015 decision in *Browning-Ferris Industries* addressed this issue, requiring all firms that control the terms and conditions of employment to come to the bargaining table, ensuring that workers are again able to engage in their right to collective bargaining. Employers already face only narrow liability under *Browning-Ferris*, and the Board would examine the specific circumstances of each case before making a determination. Nothing in the decision implies that all employers in a specific industry will be found to be joint employers under the NLRA.

Similarly, the Wage & Hour Division's Administrator's Interpretation on the joint employer standard under the FLSA did not create any new policy; rather, it simply sought to make clear for employers their responsibilities under existing court law and opinion, and to provide the exact kind of clarity and guidance to employers and the regulated community that proponents of the H.R. 3441 purport to seek. And yet, earlier this year, the U.S. Department of Labor rescinded that Administrator's Interpretation, hiding it from view.

In spite of its title, H.R. 3441 does nothing to save local businesses. Instead, it saves large corporations from any responsibility for violations of the FLSA and NLRA. The legislation leaves small businesses and their workers without meaningful recourse. We urge you, your fellow Committee members, and all Members of the House of Representatives to oppose this bill.

Sincerely,

Celine McNicholas
Labor Counsel, Economic Policy Institute Policy Center

Heidi Shierholz
Senior Economist and Director of Policy, Economic Policy Institute Policy Center

[1] http://www.epi.org/publication/the-joint-employer-standard-and-the-national-labor-relations-board-what-is-at-stake-for-workers/