

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

March 12, 2018

The Honorable Peter Robb  
General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, DC 20570

Dear Mr. Robb:

We write with regard to your decision to move to stay proceedings and pursue a settlement of pending charges involving McDonald's USA, LLC, over the objections of the adversely impacted workers and their representatives. Over the past three years of litigation, this case developed an extensive record detailing allegations that McDonald's and its franchisees, as joint employers, retaliated against employees for exercising their rights under the National Labor Relations Act ("NLRA").

The National Labor Relations Board ("the Board") consumed significant resources in this litigation as it held over 150 days of hearings. We understand that your office moved to stay the proceedings with less than a handful of hearing days remaining before the trial was concluded and the record was closed. We request that you resume the litigation, which your office has long found to have merit, and that you produce the record of the consolidated case.

While we recognize the exclusive and unreviewable prosecutorial discretion that the NLRA affords the office of General Counsel, we are troubled that your decision to prematurely suspend this litigation adversely impacts the charging parties' due process rights. These charging parties, who pursue this litigation on behalf of thousands of fast food workers, have opposed your motion to stay proceedings. Imposing a settlement that the charging parties do not approve would risk denying them recourse for the harms the General Counsel's office alleged in its complaints. For that reason, it appears both imprudent with respect to resources already committed, and unfair to the charging parties to prematurely terminate prosecution of this matter.

Although your motion claimed that a stay is necessary for your office "to assess the impact" of the Board's decision in *Hy-Brand*<sup>1</sup> to overturn *Browning Ferris*,<sup>2</sup> we note that your office issued complaints against McDonald's and its franchisees in December 2014 under the pre-*Browning Ferris* standard. In any event, the Board's decision to vacate *Hy-Brand* on February 26, 2018 moots this concern, and the Board is now seeking enforcement of *Browning Ferris* in the U.S. Court of Appeals for the D.C. Circuit.<sup>3</sup>

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<sup>1</sup> 365 NLRB No. 156 (2017).

<sup>2</sup> 362 NLRB No. 186 (2015).

<sup>3</sup> *Browning-Ferris Indus. v. NLRB*, Nos. 16-1028, 16-1063, 16-1064 (D.C. Cir. Motion of the NLRB to Recall Mandate Based on Exceptional Circumstances filed Mar. 1, 2018).

As a related matter, we respectfully request that you produce the entire record of the consolidated litigation against McDonald's by April 1, 2018.<sup>4</sup> The Board's application of its joint employment standard to this case has been of great interest to the Committee on Education and the Workforce.<sup>5</sup> The facts uncovered in this litigation and commentary on its implications have been discussed in hearings without a complete record. Despite this, sweeping generalities have been made regarding this case's application to other franchises. Producing the record of the consolidated litigation would enable Congress to carefully consider the details of this important case.

Please direct the production of documents and all questions to [kyle.decant@mail.house.gov](mailto:kyle.decant@mail.house.gov). Thank you for your consideration of this request.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member  
Committee on Education and the Workforce



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**SUZANNE BONAMICI**  
Vice Ranking Member  
Committee on Education and the Workforce



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**GREGORIO KILILI CAMACHO SABLAN**  
Ranking Member  
Subcommittee on Health, Employment, Labor  
and Pensions



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**MARK TAKANO**  
Ranking Member  
Subcommittee on Workforce Protections

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<sup>4</sup> This request encompasses the records associated with all case numbers listed in the Administrative Law Judge's Order Denying Respondents' Motion to Sever, dated February 20, 2015.

<sup>5</sup> See, e.g., H.R. 3441, "Save Local Business Act," Hearing Before the Subcommittee on Workforce Protections and the Subcommittee on Health, Employment, Labor and Pensions, 115<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Sept. 13, 2017); Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship, Hearing Before the Committee on Education and the Workforce, 115<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Jul. 12, 2017); Restoring Balance and Fairness to the National Labor Relations Board, Hearing Before the Subcommittee on Health, Employment, Labor and Pensions 115<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Feb. 14, 2017); H.R. 3459, "Protecting Local Business Opportunity Act," Hearing Before the Subcommittee on Health, Employment, Labor and Pensions, 114<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Sept. 29, 2015); Expanding Joint Employer Status: What Does It Mean for Workers and Job Creators?, Hearing before the Subcommittee on Health, Employment, Labor and Pensions, 113<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 9, 2014).



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**ROSA L. DELAURO**

Ranking Member  
Subcommittee on Labor, Health and  
Human Services, Education, and Related  
Agencies  
Committee on Appropriations



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**DONALD NORCROSS**

Member of Congress



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**ADRIANO ESPAILLAT**

Member of Congress



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**KEITH ELLISON**

Member of Congress



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**MARK POCAN**

Member of Congress