

**Opening Statement of Ranking Member Robert C. “Bobby” Scott
Committee on Education and the Workforce
Markup of H.R. 3459 – Protecting Local Business Opportunity Act
HVC 210 – 10 a.m.
October 28, 2015**

Mr. Chairman, the bill we are considering today would overturn the National Labor Relations Board’s recent decision in the case known as “*Browning Ferris*” that provided for a more inclusive test of who is treated as a joint employer under the National Labor Relations Act.

Under the NLRA, two statutory employers may be “joint employers” if they share or co-determine matters governing the essential terms and conditions of employment. The Board’s recent decision simply returned to the traditional joint employer test in place prior to 1984 – a time when the franchising business model had prospered.

Today, the NLRB takes a reasoned, case-by-case approach to assessing whether a franchisor or other employer is considered a “joint employer.” For example, the NLRB General Counsel determined that Freshii – a franchisor with over 100 stores – would not be a joint-employer, because

its control was generally limited to brand identity and product quality, and it had no right to control the terms and conditions its franchisee employment relations.

The bill before us, however, would have far-reaching – and perhaps unforeseen - negative consequences for America’s workers and employers.

The bill jettisons the common law definition of employer and amends the definition of joint employer to only those who have – quote – “actual, direct and immediate” – end quote – control over the terms and conditions of employment. This bill denies workers the right to bring all of their employers to the bargaining table who have a say, whether exercised or not, in the essential terms and conditions of employment.

But it doesn’t end there. I’m concerned this bill would have an unforeseen consequence of emboldening franchisors to exercise more control over their franchisees than under current law. By abandoning the

common law test for who is an employer, franchisors or others could maximize their control over the franchisee's employment practices without incurring liability as a joint employer.

Mr. Chairman, this bill should be rejected. By my count, this committee has met 23 times since 2011 in attempts to undermine the ability of workers to organize and collectively bargain. It is unfortunate that the Majority is continuing in this misguided path, because, as a recent Education and Workforce Committee Democratic staff report shows, unionized workers earn higher wages and have access to better benefits than their non-unionized counterparts.

Mr. Chairman, the majority of the gains in our economic recovery have been disproportionately concentrated among the wealthiest 1% and not benefited millions of hard-working Americans.

This Committee ought to be focused on policies that would help working people make a better life for themselves and their families. We know

that workers all across America are struggling and that it has been a very long time since most of them got a raise.

Today, my Democratic colleagues, Mr. Polis, Mr. Pocan, Ms. Wilson, Ms. Bonamici, and Ms. Clark will offer amendments that would strengthen protections for workers, help provide for predictable schedules, prevent worker misclassification, and eliminate loopholes that employers use to justify paying men more than women. These solutions are part of the Working Families Agenda – an agenda supported by Democrats in this committee and across the caucus –that includes policy solutions that would boost wages, help workers achieve a better balance between work and family life, and level the playing field by ending discrimination so all workers have a fair shot. All of these priorities are within our Committee’s jurisdiction, and I urge my colleagues to support all of the Democratic amendments.

Mr. Chairman, we should be partnering to help all workers earn decent wages and receive fair benefits that enable them to provide a better and

more prosperous future for their children. That's where the attention of this Committee should be – not on repeatedly undermining those same workers' ability to organize and collectively bargain.

I yield back the balance of my time.