COMMITTEE ON EDUCATION AND THE WORKFORCE

COMMITTEE STATEMENT

Statement by Rep. Bradley Byrne
Chairman, Subcommittee on Workforce Protections
Markup of H.R. 3441, the Save Local Business Act
October 4, 2017

I was proud to introduce the *Save Local Business Act* because it's good for workers and it's good for job creators. I appreciate the opportunity to speak in support of this commonsense proposal today.

As a former labor attorney, I can tell you it used to be pretty clear who an employer was. But now, two completely separate employers can be considered joint employers if they make a business agreement that "indirectly" or even "potentially" impacts their employees.

Those are certainly vague terms. So vague that many lawyers may not even agree on what exactly they mean. But we know the real-world impact has been confusion, uncertainty, and growing legal jeopardy.

Here's what those terms mean to the owner of Wintzell's Oyster House in my district in Mobile, Alabama. The owner, Bob Omainsky, wrote recently in Alabama Today:

"If we hire an outside landscaping company to keep our lawns lush, I could be considered a joint employer if I show the landscapers where to mow. Or, if I contract a food supplier for certain ingredients, I could become part of a lawsuit if one of their workers complains about overtime pay. The uncertainty is nothing more than governmental overreach that is crippling eateries like Wintzell's and discouraging growth throughout the restaurant industry."

There are small business owners in all of our districts who are working hard each and every day to create jobs and contribute to our local economies, and they deserve better than this. They deserve clarity.

Workers deserve better, too. They deserve better than an extreme and unworkable rule that threatens 1.7 million jobs. And they deserve better than unelected bureaucrats interfering with their relationship with their employer for the sole purpose of empowering union and trial lawyer interests.

That's right. This joint employer scheme was really intended to make it easier for Big Labor to organize small businesses. It's no surprise that some of the nation's largest labor unions have been peddling scare tactics and spreading false information about H.R. 3441.

So let me be clear on what this bill does. H.R. 3441 maintains existing worker protections under the *National Labor Relations Act* and the *Fair Labor Standards Act*.

We are amending the NLRA to roll back the *Browning-Ferris* decision and prevent future NLRB overreach. And we are amending the FLSA because aggressive trial lawyers and activist judges have made matters even worse by creating a confusing patchwork of joint employer standards across the country.

Again, this bill does not take away a single protection from a single worker. Instead, it ensures the actual employer is legally responsible for providing those protections. If everyone is responsible, no one is.

Some have wrongly claimed that the joint employer standard reflected in H.R. 3441 is somehow a dramatic departure from long-standing policy prior to the NLRB's 2015 ruling. That claim is quite frankly absurd.

I'd like to remind the members of this committee that it was the *Browning-Ferris* decision, and actions by Obama-era bureaucrats, that completely disrupted what was once a stable legal environment and threatened countless local businesses as a result.

H.R. 3441 simply restores the commonsense joint employer standard that workers and employers relied on for decades. It clarifies that two or more employers must have "actual, direct, and immediate" control over essential terms and conditions of employment to be considered joint employers.

The bill as introduced is consistent with case law prior to BFI, and today's markup presents an opportunity to make the bill even clearer.

That's why the substitute amendment I am offering makes clarifying and technical changes to the underlying bill. I urge all members to support the substitute, as well as H.R. 3441.