National Association of Home Builders

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Government Affairs

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The Honorable Bradley Byrne
Chairman
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Byrne:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I write in strong support of the bipartisan *Save Local Business Act*, which would restore a commonsense definition of joint employment to provide clarity to small businesses and entrepreneurs about their legal obligations.

The NLRB's contentious decision in *Browning Ferris* vastly expanded the test for finding joint employer status beyond the clear-cut standard of "direct and immediate" control over workers. A company can now be considered a joint employer if it has an "indirect or potential" right to control or co-determine the essential terms of a worker's employment, including hiring and firing, discipline, supervision, scheduling, seniority and overtime, and assigning work and determining the means and methods of performance. For the construction sector, this means builders, specialty trades, and other employers could be held liable for the labor and employment practices of third-party vendors, suppliers, and contractors over which they have no direct control.

The determination of joint employment is especially significant for residential construction, an industry that is built upon the subcontracting business model. Seventy-two percent of NAHB's builder members have less than ten employees and sixty-six percent construct less than ten homes annually. For most builders, there is simply insufficient internal demand to justify hiring an employee for the numerous specialized tasks required to complete a home project. Consequently, builders rely on an average of twenty-two subcontracting firms to build a home, including framers, roofers, electricians and other types of specialty trades. Without them, many family-owned home building firms would simply cease to be viable operations.

The *Save Local Business Act* statutorily affirms that a company may be considered a joint employer of a worker only if it "directly, actually, and immediately" exercises significant control over the primary elements of employment, such as hiring, firing, determining pay, or supervising workers on a routine basis. This provides employers with a clear-cut standard for joint employment, and will allow building firms and other construction businesses to operate with certainty in their labor and employment obligations under the law.

NAHB thanks you and the bills' cosponsors for advancing legislation to remedy the ambiguity created by the NLRB's 2015 decision and restore the traditional definition

of joint employment. NAHB strongly supports the *Save Local Business Act* and urges Congress to consider this legislation without delay.

Thank you for considering our views.

Sincerely,

James W. Tobin III

CC: Representative Virginia Foxx, Chairwoman, Committee on Education and the Workforce
Representative Tim Walberg, Chairman, Subcommittee on Health, Employment, Labor and Pensions
Representative Henry Cuellar
Representative J. Luis Correa