



November 6, 2017

The Honorable Paul Ryan
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Speaker Ryan and Minority Leader Pelosi:

On behalf of the nation's retail industry, the National Retail Federation (NRF) urges members of the House to vote in favor of H.R. 3441, the Save Local Business Act. Restoring certainty in labor relations is a top priority for retailers, and we appreciate congressional efforts to address the real-world consequences associated with limitless joint employer liability. **Please note that NRF will consider votes on H.R. 3441 as Opportunity Index Votes for our annual voting scorecard.**

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

Retailers of all sizes and in every portion of the country continue to have significant concerns with the National Labor Relations Board's (NLRB) controversial decision in *Browning-Ferris Industries* (32-RC-109684), which upended decades of precedent and fundamentally redefined who an employer is. For more than 30 years, the NLRB had used a clear test for determining joint employer status, considering an entity to be a joint employer if it exercised direct and immediate control over another business' employees. Direct control was generally understood to include the ability to hire, fire, discipline, supervise, or direct those employees. This long-held standard provided clarity under the law and enabled small businesses to flourish under franchise agreements and contracts to provide their services and products to a variety of companies.

However, in *Browning-Ferris*, the Board majority abandoned the bright-line test and expanded the joint employer definition to include employers with indirect or even unexercised potential control over working conditions. Under the broader standard, the NLRB created the impossible scenario in which one business can be held liable for the actions of another entirely independent business, such as a subcontractor or franchisee. These harmful and unnecessary changes have resulted in seemingly limitless liability in business-to-business relationships and a significant lack of certainty for retailers nationwide.

To make matters worse, the Department of Labor (DOL) under the previous administration followed in the Board's footsteps and issued its own sweeping guidance on joint employer relationships in 2016. DOL's guidance compounded the uncertainty created by the NLRB and led to

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a dramatic increase in growth-chilling litigation in industries across the country. NRF welcomed Secretary of Labor Acosta's withdrawal of the problematic guidance as an important first step in addressing the joint employer jeopardy employers face; however, job creators need longer-term stability in labor relations that Congress can best provide.

The Save Local Business Act would establish a commonsense definition of employer under the National Labor Relations Act and the Fair Labor Standards Act, restoring much-needed clarity for employees and employers alike. Without congressional action, retailers and chain restaurants will continue to face unlimited and unpredictable joint employer threats that slow job creation and entrepreneurship. For all of these reasons, NRF strongly supports this important bipartisan legislation and will consider H.R. 3441 to be a "key vote" in our congressional scoring process.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized flourish at the end.

David French
Senior Vice President
Government Relations

cc: Members of the United States House of Representatives