

October 3, 2017

The Honorable Virginia Foxx  
Chairwoman  
U.S. House Committee on Education and  
Workforce  
2176 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Robert "Bobby" Scott  
Ranking Member  
U.S. House Committee on Education and the  
Workforce  
2101 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairwoman Foxx and Ranking Member Scott,

Since the National Labor Relations Board's (NLRB) decision in *Browning-Ferris v NLRB* that overturned three decades of precedent to expand the definition of "joint-employer," employers have dealt with an atmosphere of uncertainty. The previous "direct control" standard to determine joint employer status was clear, consistent and predictable for all stakeholders, but the new "indirect control" standard creates an undefined, confusing definition of joint employment. For this reason, it is imperative for Congress to clarify the law by passing H.R. 3441, the Save Local Business Act.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers.

As RILA member companies represent vast, complex supply chains throughout the United States and globally, we are deeply concerned with the "indirect control" standard created by the NLRB. Supply chains consists of numerous business to business relationships between the retailer, suppliers, and distributors with the purpose of efficiently delivering goods American consumers want and need on a daily basis. Moreover, short term spikes in product order demands at distribution and fulfillment centers require retailers to have flexibility to use third party agencies to satisfy temporary staffing needs. The NLRB's new standard could potentially harm these complex and dynamic operations by placing more restrictions on how retailers can interact with business partners.

In addition to the practical impacts on supply chain operations, this new standard by the NLRB has significant negative impacts on public policy. RILA member companies, as market leaders, expect high standards from their supply chain partners to ensure compliance with environmental, labor and sourcing laws and regulations. However, as Microsoft argued in their amicus brief in the *Browning-Ferris* case, the new indirect control standard creates a perverse incentive for large influential companies to potentially do less, rather than more, to promote higher standards from suppliers for fear they will be deemed a joint employer.

For these reasons, RILA strongly encourages the Committee to pass of H.R. 3441, the Save Local Business Act, to provide clarity and flexibility in the law so RILA member companies can continue to create growth opportunities and innovation in the retail industry.

Sincerely,

/s

Evan Armstrong

Vice President, Government Affairs