

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron

General President

September 19, 2017

The Honorable Virginia Foxx
Chair
Committee on Education and the Workforce
2262 Rayburn House Office Building
Washington, DC 20515-3305

The Honorable Robert C. Scott
Ranking Member
Committee on Education and the Workforce
1201 Longworth House Office Building
Washington, DC 20515-4603

Re: Opposition to HR 3441, the Save Local Business Act

Dear Chair Foxx and Ranking Member Scott,

I write to respectfully express our opposition to HR 3441, the Save Local Business Act, because it will provide a safe haven for unscrupulous contractors in the construction industry who use a system of subcontractors to deliberately shield themselves from liability for abusing workers and stealing jobs away from law-abiding businesses, even as they knowingly profit from it.

Regrettably, while most companies in the construction industry are legitimate, responsible employers, we are also home to many who excel in illegal employment practices. This fact is well known and widely acknowledged. The trend is for contractors to use subcontractors or labor brokers who either intentionally misclassify employees as independent contractors or, more often, pay employees off the books. They find two benefits in their schemes. First, through violating wage, tax, immigration, workers' compensation and other employment laws, they can shave up to 30 percent off of their labor costs and underbid law-abiding businesses. Second, if laws are enforced, contractors use the subcontract relationship as a shield against liability and replace offending subcontractors or labor brokers with others that will do the same.

There is one vulnerability to their schemes. Under the Fair Labor Standards Act (FLSA) and National Labor Relations Act (NLRA) these contractors are frequently joint employers with their subcontractors or labor brokers. The contractors keep time, supply building materials, discharge workers, provide training and daily supervision.

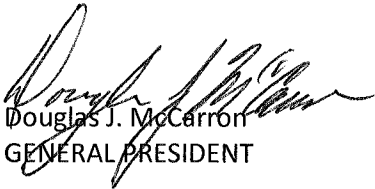
HR 3441 closes that door by making it exceedingly difficult to find joint-employer liability. Under the bill, businesses cannot be joint employers unless they have direct, actual and immediate control over the essential terms and conditions of employment—a remarkable reversal of decades of law. Moreover, a contractor and labor broker need only split up responsibility over essential terms, and joint employment is defeated. Indeed, it is arguable that under such an arrangement there may be no employer at all.

It cannot be forgotten that construction contractors that scheme to cheat workers out of overtime, wages and the right to collective action also fail to comply with federal and state employment tax laws. In Texas alone federal tax losses from cheating contractors has been estimated to cost the federal government over \$1 billion.

This is not to suggest that legitimate, law-abiding contractors should not use subcontractors, or that there are not thousands of legitimate, law-abiding contractors and independent contractors across this country. But it must be recognized that abusive subcontracting schemes as described above are also prevalent in our industry and that this bill would make it even harder to crack down on these illegal practices.

Despite its name, HR 3441 is a blue print to violate the law and drive law-abiding employers out of business and make it more difficult for working men and women to reach the middle class. The law needs to protect workers and responsible businesses --not put them in jeopardy.

Very truly yours,



Douglas J. McCarron
GENERAL PRESIDENT

DJM/km/jb