craft a society we want to live in, and we do it here because of the sacrifice that was given to keep this Nation free.

So the work we do here—and it is often said, you shouldn't get a pat on the back for doing what you are supposed to do. That is not what this is about. This is about a recognition that this Nation cares deeply about the daughters and sons who will serve us. This Nation expects the Congress to make sure that they are cared for in a manner that reflects their sacrifice, and they want us to do it in a bipartisan manner that celebrates the idea of self-governance.

So with that, I would say, Mr. Speaker, I am proud to support this piece of legislation as the final piece of this package. I am proud of the work and to call my friend from Florida a dear friend, someone who I know that, between you and your father, has given decades of service to our Nation's veterans.

There are reasons to be optimistic. There are reasons to believe that we can get through this. There is reason to believe that, come Veterans Day, our better days lie ahead of us.

Mr. Speaker, I support H.R. 4173, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I support this great bill. And see how we are doing this? This was set up, the crisis line was set up a few years ago. We are improving upon that, and hopefully we are going to save lives.

Again, I appreciate—I am really proud to serve on this committee. I have served on the committee. We have served on it together. We came in together, and we made our veterans, our true heroes, a priority.

I appreciate you, sir. You take the politics out of it. Chairman ROE takes the politics out of it. I like to think I do, too, and all the members of the committee do, and we put our veterans first. This is a moral committee, as you said. It is a moral committee.

I hope the children are watching this right now because, you know, there is a lot of gridlock in Washington, but we work together. They are not high-profile bills, but they are very important bills to our heroes. So, again, I am very proud to manage these bills today.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 4173, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BILIRAKIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

SAVE LOCAL BUSINESS ACT

Ms. FOXX. Mr. Speaker, pursuant to House Resolution 607, I call up the bill (H.R. 3441) to clarify the treatment of two or more employers as joint employers under the National Labor Relations Act and the Fair Labor Standards Act of 1938, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 607, the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce, printed in the bill, shall be considered as adopted, and the bill, as amended, shall be considered read.

The text of the bill, as amended, is as follows:

H.R. 3441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Save Local Business Act''.

SEC. 2. CLARIFICATION OF JOINT EMPLOYMENT.

(a) NATIONAL LABOR RELATIONS ACT.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended—

(1) by striking ''The term 'employer' '' and inserting ''(A) The term 'employer' ''; and

(2) by adding at the end the following:

''(B) A person may be considered a joint employer in relation to an employee only if such person directly, actually, and immediately, and not in a limited and routine manner, exercises significant control over essential terms and conditions of employment, such as hiring employees, discharging employees, determining individual employee rates of pay and benefits, day-to-day supervision of employees, assigning individual work schedules, positions, and tasks, or administering employee discipline.''.

(b) FAIR LABOR STANDARDS ACT OF 1938.—Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)) is amended—

(1) by striking '' 'Employer' includes'' and inserting ''(1) 'Employer' includes''; and

(2) by adding at the end the following:

''(2) A person may be considered a joint employer in relation to an employee for purposes of this Act only if such person meets the criteria set forth in section 2(2)(B) of the National Labor Relations Act (29 U.S.C. 152(2)(B)).''.

The SPEAKER pro tempore. The bill shall be debatable for 1 hour, equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce.

The gentlewoman from North Carolina (Ms. FOXX) and the gentleman from Virginia (Mr. SCOTT) each will control 30 minutes.

The Chair recognizes the gentlewoman from North Carolina.

GENERAL LEAVE

Ms. FOXX. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 3441.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H.R. 3441, the Save Local Business Act.

Mr. Speaker, the premise of this legislation is simple. It is about protecting the ability of entrepreneurs in this country to start and run their own business, and it is about ensuring opportunities within reach for all Americans.

Every day, men and women across the country work hard to earn a paycheck and provide for their families, and every day, local businessowners work hard to keep their doors open and hire employees.

Meanwhile, bureaucrats in Washington are busy setting policies that have a widespread impact on every workplace in the country. As we learned during the Obama administration and from rulings made by the previous National Labor Relations Board, too often these policies do far more harm than good.

When it comes to rules and policies governing our Nation's workforce, there has never been a greater need for Congress to clarify areas of the law that shouldn't be left up to boards and Federal agencies to decide. That is especially true regarding the joint employer issue. In 2015, when the Obama administration's NLRB unilaterally redefined what it means to be a joint employer, the result was massive confusion and uncertainty.

The Committee on Education and the Workforce has heard from countless individuals on how the vague and unworkable new joint employer standard threatens job creation, creates new roadblocks for entrepreneurs, and upends successful business models and relationships.

H.R. 3441, the Save Local Business Act, will deliver much-needed relief by providing legal clarity under the National Labor Relations Act and the Fair Labor Standards Act. The legislation simply restores a commonsense joint employer standard, and it does so in a way that upholds vital worker protections and ensures all employers know their responsibilities to their employees.

I want to thank my colleague, Representative BYRNE, for introducing and tirelessly championing this proposal, along with the Democratic cosponsors.

I urge all Members to vote in favor of H.R. 3441 so we can protect local jobs, opportunity, and entrepreneurship.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to H.R. 3441, the so-called Save Local Business Act. Mr. Speaker, in recent years, employers have increasingly moved away from direct hiring of employees to the use of permatemps and subcontracting to reduce labor costs

and liability. For many workers, the name on the door of the building where they work may not be the name of the company that technically signs their paycheck.

In situations like these, where more than one entity controls or has the contractual right to control the terms and conditions of employment, the National Labor Relations Act and the Fair Labor Standards Act hold both entities responsible for violations as joint employers. The joint employment standard under the NLRA ensures that workers can negotiate with all parties that control the terms and conditions of employment. Similarly, the joint employment standard under the FLSA ensures the appropriate companies can be held accountable for wage theft, equal pay, overtime pay, and child labor violations.

H.R. 3441 rewrites both the NLRA and the FLSA by establishing a narrow definition of joint employer that effectively eliminates accountability for some of the entities that are actually calling the shots. Under this bill, an entity may be a joint employer only if it ''directly, actually, and immediately'' exercises control over nine essential terms and conditions of employment, such as hiring, firing, determining rates of pay, and scheduling.

However, an entity could have control over all nine of the essential terms, and if it indirectly exercises control through an intermediary, such as a subcontractor, then the entity would not be an employer because its control is not direct. This loophole would allow joint employers to evade liability for child labor or wage theft and undermine workers' ability to bring all of the entities to the bargaining table that actually control the terms and conditions of employment.

Alternatively, if an entity controls only eight of these nine essential terms and outsources the ninth, then it may also not be deemed a joint employer under this legislation. That is just a loophole.

Under this legislation, an employee could have no employer liable for a violation. This would arise when each of the joint employers raises a defense that they are not liable because they are not an employer, because they don't control all nine of the essential terms and conditions of employment.

This bill provides no guidance over how many of the essential terms the joint employer must control. Do they have to control two? a majority? all nine?

The consequence is that a court could find an employee is owed overtime, but nobody owes the money because nobody qualifies as an employer under the definition of the bill. This bill opens the door for potential chaos. And one thing for sure, H.R. 3441 does not provide the clarity that its proponents advertise.

Today, we are debating legislation that is based on a misplaced criticism of the National Labor Relations Board's 2015 decision in Browning-Ferris Industries, where the NLRB held that the client employer, BFI, and its staffing agency, Leadpoint, were joint employers at a recycling facility and, therefore, jointly had the duty to bargain with the union.

BFI capped wages that Leadpoint could pay and set scheduling, reserved the right to overrule Leadpoint's hiring decisions, and, if the NLRB had certified the union with only the staffing agency, Leadpoint, as the employer, then collective bargaining would have been a waste of time because Leadpoint was contractually limited in its ability to bargain without BFI's permission.

The BFI decision reinstated the common law definition of an employer, a precedent that had been in place at the NLRB for decades prior to 1984. Critics contend that the BFI case threatens the independence of franchisees.

□ 1645

Well, first, the BFI decision states that it does not cover franchising. Second, there are no decisions where a franchisor has ever been held to be a joint employer with its franchisees under either law.

Despite claims that H.R. 3441 would protect the independence of franchisees, legal experts point out that, under this bill, the bill actually insulates franchisors from liability, which leaves the franchisors free to exercise greater control over their franchisees' employee relations without liability.

Under this bill, if a franchisor directs actions that could violate wage or labor laws, then the franchisee is forced to accept this shared control, without shared responsibility. For example, suppose the franchisor directs the franchisee to designate all of the employees as managers and refuse to pay them overtime and the court comes in and says overtime was owed, then the franchisee is stuck with the bill because the franchisor is not an employer under this bill. That is not fair to small businesses and it is not fair to franchisees.

This legislation also creates perverse incentives by rewarding low-road construction contractors who compete by outsourcing entities that drive down costs by stealing wages, not paying overtime, and other violations. A national coalition of construction contractors is warned that H.R. 3441 would ''further tilt the field of competition against honest, ethical businesses.''

For those reasons, Mr. Speaker, I urge a ''no'' vote, and I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. BYRNE), the chief sponsor of this bill.

Mr. BYRNE. Mr. Speaker, I thank the gentlewoman for her leadership on this issue and for her continued leadership of our committee.

Mr. Speaker, today is a big day. Today is an opportunity for this House to stand up for our Nation's workers and to protect the small local businesses, which form the backbone of the American economy. Today is about restoring decades-old labor law. Ultimately, today is about giving clarity to workers and job creators all across our country.

I have heard from our friends across the aisle that somehow someone can be an employee without there being an employer. I call that the immaculately conceived employee. There is no such thing under the law, nor has there ever been.

This bill does not change the definition of employer. It simply takes the definition of joint employer back to the way it was a few years ago.

It is a shame that we are even having to have this bill. But the activist National Labor Relations Board in 2015 issued a decision that fundamentally upended labor law as we knew it. This change didn't come through the democratically elected Congress, but, instead, from a panel of unelected bureaucrats.

The NLRB's decision and the resulting regulatory agenda have caused deep uncertainty among job creators. For workers, they are left to wonder who their boss really is. That is an incredibly confusing situation to be in.

Under the new joint employer standard, what does it mean to have ''indirect'' or ''potential'' control over an employee?

I have practiced labor and employment law for decades and I do not know what that means, so I can only imagine the confusion Main Street businesses are facing due to this standard.

Currently, there are at least nine different legal tests nationwide to determine joint employer status under the Fair Labor Standards Act, and more to come. This patchwork of standards creates regulatory uncertainty, especially for job creators doing businesses in multiple States.

So, despite what some on the other side want to believe, this is not an abstract issue. I have visited numerous local businesses in my district, and they are very worried about this scheme. I have heard from workers who want to remain an employee of a locally owned business with an owner who knows them, instead of becoming just another employee in some large corporation.

Clearly, I am not the only one who heard these concerns. This legislation is cosponsored by 123 of my colleagues, including Members from both sides of the aisle. This is a bipartisan issue because it isn't about politics. Instead, it is about saving jobs and supporting locally owned businesses.

Let me make something crystal clear: this bill does not remove a single protection for today's workforce. Despite the scare tactics being used by big labor bosses and their trial lawyer friends, the same important protections exist under this legislation, and any irresponsible employer can be held accountable.

Mr. Speaker, I urge all of my colleagues to take the side of our locally owned businesses, to take the side of our small business job creators, and to take the side of American workers.

Let's end the confusion and let's pass the Save Local Business Act.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 30 seconds to state that I agree with the gentleman when he says that no rights are reduced. The only problem is you can't have anybody that is liable to fulfill your benefits under whatever those rights are. If you are owed overtime, you are owed overtime. That is not reduced. It is just that nobody is there to pay it.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Ms. FUDGE).

Ms. FUDGE. Mr. Speaker, I thank Ranking Member SCOTT for yielding.

Mr. Speaker, H.R. 3441, the Save Local Business Act, would fundamentally redefine the relationship between employers and employees.

Mr. Speaker, corporate profits and income inequality are at an all-time high, yet we are debating a bill that would strip workers of their right to hold employers accountable, allowing corporations to further stifle wage growth and undermine collective bargaining. This is yet another Republican attempt to make the rich richer and the working people poorer, just like their tax bill. What we should be fighting for is a living wage and employee rights.

My Republican colleagues say the law is ambiguous and we must act to save small businesses. The law is not ambiguous. They just don't like it because it holds businesses responsible and forces them to bargain with unions. This bill is an assault on workers.

Mr. Speaker, I include in the RECORD a letter from the Economic Policy Institute outlining how H.R. 3441 will ensure small businesses are left with sole responsibility for business practices often dictated by large corporations; and, in addition, a letter from the International Brotherhood of Teamsters opposing this bill in support of workers protections.

ECONOMIC POLICY INSTITUTE,
Washington, DC, October 3, 2017.

Hon. VIRGINIA FOXX,
Chairwoman, Committee on Education & the Workforce, House of Representatives.
Hon. BOBBY C. SCOTT,
Ranking Member, Committee on Education & the Workforce, House of Representatives.

DEAR CHAIRWOMAN FOXX AND RANKING MEMBER SCOTT: On behalf of the Economic Policy Institute Policy Center, we write to express our strong opposition the H.R. 3441, the so-called ''Save Local Business Act,'' which would do nothing to protect small business owners or their workers. The Economic Policy Institute is a nonprofit, nonpartisan think tank founded in 1986, and our labor policy unit assesses actions by Congress and federal agencies that impact workers and the economy. We urge you to oppose this legislation.

The so-called ''Save Local Business Act'' (H.R. 3441) would roll back the joint employer standards under both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA). It has nothing to do with protecting small businesses. In fact, the bill would ensure that small businesses are left with sole responsibility for business practices often mandated by large corporations like franchisors. It would establish a joint employer standard that lets big corporations avoid liability for labor and employment violations and leaves small businesses on the hook.

Given the realities of the modern workplace, in which employees often find themselves subject to more than one employer, working people deserve a joint employer standard that guarantees their rights and protections under basic labor and employment laws. Instead, this bill would establish a standard that makes it nearly impossible for workers whose wages are stolen or who are fired for supporting a union to get justice. By limiting employer responsibility to only those firms who ''directly, actually, and immediately'' exercise significant control over the essential terms and conditions of employment, the bill would enable large firms that contract for services to evade responsibility under both the NLRA and the FLSA.

When two or more businesses co-determine or share control over a worker's pay, schedule, or job duties, then both of those businesses should be considered employers. A weak joint employer standard robs workers of their rights, making it impossible for them to effectively collectively bargain or litigate workplace disputes—and it leaves small businesses holding the bag when the large corporations that control their business practices and set their employees' schedules violate labor law and refuse to come to the bargaining table. If this committee wishes to support small businesses and the workers they employ, then it should support a strong joint employer standard rather than this legislation.

Since the NLRB narrowed its joint employer standard in 1984, contingent and alternative workforce arrangements—including reliance on temporary staffing firms and contractors to outsource services traditionally performed by in-house workers—have grown dramatically. Recent estimates find that 15.8 percent of workers were engaged in alternative work arrangements in late 2015, or around 24 million workers in today's labor market.

The NLRB's 2015 decision in Browning-Ferris Industries addressed this issue, requiring all firms that control the terms and conditions of employment to come to the bargaining table, ensuring that workers are again able to engage in their right to collective bargaining. Employers already face only narrow liability under Browning-Ferris, and the Board would examine the specific circumstances of each case before making a determination. Nothing in the decision implies that all employers in a specific industry will be found to be joint employers under the NLRA.

Similarly, the Wage & Hour Division's Administrator's Interpretation on the joint employer standard under the FLSA did not create any new policy; rather, it simply sought to make clear for employers their responsibilities under existing court law and opinion, and to provide the exact kind of clarity and guidance to employers and the regulated community that proponents of the H.R. 3441 purport to seek. And yet, earlier this year, the U.S. Department of Labor rescinded that Administrator's Interpretation, hiding it from view.

In spite of its title, H.R. 3441 does nothing to save local businesses. Instead, it saves large corporations from any responsibility for violations of the FLSA and NLRA. The legislation leaves small businesses and their workers without meaningful recourse. We urge you, your fellow Committee members, and all Members of the House of Representatives to oppose this bill.

Sincerely,

CELINE MCNICHOLAS,
Labor Counsel, Economic Policy Institute Policy Center.
HEIDI SHIERHOLZ,
Senior Economist and Director of Policy, Economic Policy Institute Policy Center.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Washington, DC, October 3, 2017.

House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the 1.4 million members of the International Brotherhood of Teamsters, I am writing to express our vigorous opposition to H.R. 3441, the Save Local Business Act. I strongly urge you to reject this legislation.

H.R. 3441 seeks to legislate around a century of consistent case law and established joint employer standards in labor and employment law. The bill redefines the term ''employer'' so narrowly that many workers will have no remedy when their employers violate wage laws or their rights to organize and bargain collectively. We believe the legislation will encourage ''gaming the system'' so that no one exercises enough control to be liable as an employer.

The legislation would overturn the National Labor Relations Board (NLRB) Browning-Ferris decision and leave worker protections weaker than they were prior to Congress adopting the National Labor Relations Act (NLRA) in 1935. On August 27, 2015, the NLRB, in its Browning Ferris Industries (BFI) decision, affirmed the basic principle that two or more employers are joint employers of the same employees if they are both employers under common law and they ''share or co-determine those matters governing the essential terms and conditions of employment.'' H.R. 3441 would overturn this decision and allow employers to evade their responsibility to engage in meaningful collective bargaining.

The BFI case involves a labor-only, cost-plus staffing contract under which BFI has subcontracted the employment relationship only to a staffing agency, Leadpoint. BFI owns the facility and equipment on which Leadpoint's employees work; it directs the quality and quantity of work performed by Leadpoint workers.

BFI oversees operations with its own personnel and retains authority to approve or reject Leadpoint's workers. Leadpoint can only pay its workers amounts that comply with its staffing agreement with BFI. As the NLRB noted, the Union ''assert(ed) that absent a change in the joint-employer standard, a putative employer, like BFI, that is a necessary party to meaningful collective bargaining will continue to insulate itself by the 'calculated restructuring of employment and insertion of a contractor to insulate itself from the basic legal obligation to recognize and bargain with employees' representative.''

The NLRB joint employer decision is not a dramatic departure from existing law. It does not upend business as we know it, nor does it undermine the franchise business model, as many have claimed. Current law balances the interests of workers and employers by requiring a fact specific inquiry to determine whether or not there is a joint

employer relationship. The NLRB joint employer decision in the BFI case is fact specific and clarifies the joint employment standard.

Workers at BFI/Leadpoint chose to exercise their right to determine whether they wanted to organize and bargain collectively. Workers voted and the ballots from that election were impounded pending a decision in the BFI case. After the NLRB issued its decision, the ballots were counted. The BFI/Leadpoint workers decisively declared their desire to bargain collectively by voting 4–1 in favor of Teamster representation. The NLRB ruling will allow these (and other) workers to negotiate with and hold accountable the employer which actually controls the terms and conditions of their jobs. This legislation will deny them the ability to do so.

Not only would H.R. 3441 overturn the BFI decision, the bill would also drastically change the definition of employment relationships under the Fair Labor Standards Act (FLSA). The FLSA currently recognizes that more than one business can be an employer. Thus, an employer cannot hide behind labor contractors, brokers, or others. For example, while there are many responsible employers in the construction industry, it is well known that abusive schemes are far too prevalent in this industry as well as others. Contractors use subcontractors or labor brokers who intentionally misclassify workers as independent contractors or pay them ''off the books'' to the disadvantage of responsible employers. We believe this legislation will serve as an incentive for worker misclassification to defeat employment and labor law, as well as facilitate tax avoidance.

Because the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA) refers to the definition of ''employ'' in the FLSA, H.R. 3441 will have an adverse effect on the ability of workers covered by the MSAWPA to effectively enforce child labor laws, and seek redress for wage theft and other employment abuses.

Again, H.R. 3441 would leave worker protections weaker than when Congress adopted the FLSA in 1938.

This legislation will fuel a race to the bottom for workers' rights, wages, benefits and workings conditions. Working men and women have fought long and hard for the rights and protections they now have under the National Labor Relations Act and the Fair Labor Standards Act. H.R. 3441 is another in a series of intensifying attacks by those who want to return to the era when working men and women were without rights, protections, and a voice in the workplace.

You will fail these workers if you do not reject H.R. 3441. I hope I can tell our members that you stood with them and other workers in their efforts to achieve and maintain meaningful worker rights and protections. The Teamsters Union urges you to vote no on H.R. 3441.

Sincerely,

JAMES P. HOFFA.
General President.

Ms. FUDGE. Mr. Speaker, I urge my colleagues to vote ''no'' on H.R. 3441. Let's get back to fighting for the people we were sent here to serve.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Michigan (Mr. WALBERG).

Mr. WALBERG. Mr. Speaker, I thank the chairwoman for yielding.

Mr. Speaker, I rise today in support of H.R. 3441, the Save Local Business Act.

For hardworking men and women in this country, one of the most important relationships they develop in the workplace is the relationship they have with their employer. This relationship is paramount to every worker's success. It is a relationship that impacts their paycheck, their schedule, their benefits, and the future of their career.

Unfortunately, under the Obama administration, we repeatedly saw government bureaucrats pursue regulatory policies that harmed workers and small businesses. The National Labor Relations Board's decision in Browning-Ferris is a prime example.

In that decision, the Board placed itself squarely in the middle of the employer-employee relationship by redefining what it means to be a joint employer.

The Education and the Workforce Committee has been fighting to roll back this extreme joint employer scheme since it first took effect, and for good reason. It discarded settled labor policy and blurred the lines of responsibility for decisions affecting the daily operations of local businesses across this country. Quite simply, the scheme is a threat to jobs, entrepreneurship, and local employers across the country.

I have heard from small businesses and franchises across my district about how the new joint employer scheme will upend small businesses, undermine their independence, and put jobs, livelihoods, and dreams at risk.

It is time to settle once and for all what constitutes a joint employer, not through arbitrary and misguided NLRB decisions and rulings by activist judges, but through legislation. The Save Local Business Act will roll back this unworkable scheme and restore the same straightforward joint employer test that workers and job creators relied on for decades.

The Save Local Business Act is about providing certainty for job creators in each and every one of our districts. It is about keeping the American Dream within reach.

Mr. Speaker, I urge my colleagues to vote in support of H.R. 3441.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ESPAILLAT).

Mr. ESPAILLAT. Mr. Speaker, I rise in opposition to H.R. 3441, the so-called Save Local Business Act.

This bill virtually eliminates joint employer liability under the National Labor Relations Act and under the Fair Labor Standards Act. As my colleagues have highlighted, there are numerous unintended consequences presented by this bill.

I want to highlight the impact on an often overlooked segment of our workforce: our Nation's farmworkers.

Farmworkers are among our Nation's most vulnerable workers. Farmworkers work long hours in poor conditions for low pay. Many farmworkers are undocumented and subject to severe abuse. The Migrant and Seasonal Agricultural Worker Protection Act is the principal labor statute protecting agriculture workers and establishes wage, health, safety, and recordkeeping standards for both seasonal and temporary farmworkers. Joint employment standards under this law and the Fair Labor Standards Act are vital to protecting the rights and protections afforded to these workers.

Oftentimes, farmworkers are recruited, hired, supervised, or transported by intermediaries, sometimes referred to as farm labor contractors. Farm operators utilizing farm labor contractors maintain control over working conditions seeking to ensure the financial success of their operation.

Despite this shared responsibility, farm operators may argue that the farm labor contractors they engage are the farmworkers' sole employer responsible for compliance. Farm labor contractors are often thinly capitalized. This means if a farmworker seeks redress for a violation, he or she may not be able to collect from the farm labor contractors. Under the Migrant and Seasonal Agricultural Worker Protection Act, joint employer liability helps ensure covered workers can also hold liability from farm operators that share responsibility.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield an additional 30 seconds to the gentleman from New York.

Mr. ESPAILLAT. By amending the Fair Labor Standards Act's broad definition of ''employ'' and creating a new extremely narrow definition of ''joint employer,'' H.R. 3441 upends the Fair Labor Standards Act's joint employer framework upon which we rely on.

Mr. Speaker, I include in the RECORD a statement from Farmworker Justice in opposition to this bill.

STATEMEMT ON ''SAVE LOCAL BUSINESS ACT,'' HOUSE EDUCATION AND WORKFORCE COMMITTEE—BRUCE GOLDSTEIN, PRESIDENT, FARMWORKER JUSTICE, OCTOBER 2, 2017

Farmworker Justice appreciates the opportunity to submit this statement to the House Committee on Education and the Workforce. Farmworker Justice, a national advocacy, education and litigation organization for farmworkers founded in 1981 and based in Washington, D.C. Farmworker Justice has played a leading role in advocacy, education and litigation regarding the joint employer concept to remedy and prevent labor abuses. I am President of Farmworker Justice and have 37 years of experience as an attorney, including at the National Labor Relations Board, Legal Services, in private practice and at this organization.

Farmworker Justice opposes the ''Save Local Business Act,'' HR 3441 because it would remove an important mechanism to protect farmworkers and other low-wage workers from suffering violations of the minimum wage and child labor requirements. The bill would make it extremely difficult to hold two businesses jointly liable as ''joint employers'' of the same worker or group of workers. This bill, if enacted, would result in massive violations of the minimum wage and other labor abuses that would harm farmworkers and harm the reputation of the entire agricultural sector.

This bill, if enacted, would reverse more than 130 years of knowledge developed in the

quest to eradicate sweatshops. The Fair Labor Standards Act of 1938, which sets minimum wage, overtime, and child labor standards, adopted a definition of employment relationships based on 50 years of experience under state laws that evolved to address employers' efforts to evade child labor and other labor laws.

During the mid- to late–1800's states adopted laws to regulate and limit the hours of employment of children and quickly confronted employers' efforts to evade the laws. Business owners that operated a manufacturing plant would claim that the children in the plant were employed solely by a subcontractor within the plant or had been brought to the plant by a parent or sibling and therefore should not be considered to have ''employed'' the child. Even if the subcontractor or parent were punished, in the absence of liability on the part of the plant operator it would suffer no adverse impact and would be free to find another subcontractor or parent to bring children to do the work. In addition, often a labor contractor lack sufficient assets to pay a court judgement, leaving workers remedy-less.

One of the responses of state legislatures was to adopt a broad definition of employment relationships that imposed employer status on the larger business owner even where there existed a labor intermediary. Numerous states adopted language defining employment relationships that later became the model for the Fair Labor Standards Act of 1938.

The state laws and the FLSA defined employers as entities that directly or indirectly employed a worker and defined the word ''employ'' as including not just the restrictive common law definition's ''right to control test'' but also as ''to suffer or permit to work.'' 29 USC §203(g). To ''suffer'' in this context means to acquiesce in, passively allow or to fail to prevent the worker's work.

This broad definition imposed liability on a company that had the power to prevent the work of the worker from happening and denied the business the ability to hide its head in the sand about what was happening in its business, including where it utilized labor contractors or other intermediaries which were considered employers of those workers. See Goldstein et al., ''Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment,'' 46 UCLA Law Review 983 (1999). The purpose of establishing joint responsibility is also reflected in FLSA's definition of ''employer,'' 29 USC §203(d), '' 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee.''

The facts in the U.S. Supreme Court's decision in Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947) illustrate the concept. A slaughterhouse company retained a contractor to assemble a crew of workers to debone meat in a special room within the slaughterhouse. The Department of Labor sued the defendant company for recordkeeping and overtime violations. The company denied that it employed the meat deboners, arguing that the contractor was their sole employer. The Court found that the definition of employment relationships in the FLSA imposed liability on the slaughterhouse.

The Save Local Business Act would alter the longstanding meaning of employment relationships under the FLSA and the National Labor Relations Act. The NLRA excludes agricultural workers from its protections, so I will focus on the FLSA. The FLSA's minimum wage applies to farmworkers on most (but not all) larger farms; small farms generally are excluded from the minimum wage. 29 USC 213(a)(6). Agricultural workers are excluded from overtime pay. 29 USC §213(b)(13)–(16). FLSA prohibits certain types of child labor although it allows large agricultural employers, as well as small family farms, to employ children at younger ages than is allowed in other occupations. Id. at (c)(1)–(2).

The bill would set criteria so onerous that it would be rare for two businesses that shared responsibilities regarding workers to be held to be joint employers; just one business would be held to be an employer. Because the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) refers to the definition of ''employ'' in the Fair Labor Standards Act, the proposed law may also apply to AWPA. 29 USC §1802(5). AWPA is the principal federal employment law for farmworkers, regulating employment contracts and the use of farm labor contractors.

Many agricultural workers suffer violations of the Fair Labor Standards Act's minimum wage and other basic labor protections. Often, when such workers try to remedy illegal employment practices, they run into a problem: the farm operator that really determines their job terms and has the capacity to prevent abuses, denies that it is their ''employer'' for purposes of the minimum wage and other labor protections. Instead, the farm operator claims that a ''farm labor contractor'' or other intermediary is the sole ''employer'' of the farmworkers on its farm. Often a labor contractor competes for business by promising low labor costs and when sued by victimized workers cannot afford to pay a court judgment.

In most such cases, the definition of employment relationships in the FLSA enables courts and the Department of Labor to ensure compliance with the law by considering the farm operator and the farm labor contractor to be ''joint employers'' and jointly responsible for meeting FLSA's obligations. This issue has been the subject of numerous lawsuits in which farm operators have been held to be joint employers with their farm labor contractors.

This Committee played a historic role in addressing abuses of migrant workers at the hands of farm operators and their labor contractors and recognized the importance of the joint employer concept in ensuring a law-abiding, prosperous agricultural sector. The Farm Labor Contractor Registration Act of 1964 was passed in part in response to the powerful documentary by Edward R. Murrow, ''Harvest of Shame'' that aired during Thanksgiving weekend in 1960. Congress revised its provisions and replaced it with the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. §1801 et seq. At the heart of this Committee's motivation was ensuring joint employer responsibility.

''This broad scope of joint employment—and joint employer liability—is one of the AWPA's most important features. The AWPA's legislative history indicates that Congress considered the joint employer doctrine ''a central foundation'' of this new law. 29 C.F.R. §500.20(h)(5)(ii); citing House Report, n.2 at 4552. It is the ''indivisible hinge'' that allows workers to hold accountable all those responsible for violating the AWPA's protections. Id, citing H.R. Rep. 97–885, 97th Cong., 2d Sess.1, reprinted in 1982 U.S.C.C.A.N. 4547, 4552 (1982) (''House Report'').

The economic reality is that few farm operators will risk their profitability and the survival of their business by delegating all responsibility to a labor contractor. Most farm operators who engage labor intermediaries exercise substantial decision-making regarding the impact of subcontracted workers on their business. If strawberries or grapes are harvested when they are over-ripe or under-ripe, are subjected to pathogens transmitted on the footwear or hands of farmworkers, or are not handled carefully to prevent bruising, huge financial losses could result. A farm operator generally makes these and other major decisions to ensure its profitability, even if it uses a farm labor contractor, instead of its own supervisor, to ensure that its decisions are carried out. Such farm operators should not be able to avoid complying with the minimum wage or child labor requirements by blaming a labor contractor as the sole employer. In most cases, there is shared responsibility among the farm operator and the labor contractor so that the workers on the farm ensure the profitability of that business. That shared responsibility means shared liability is appropriate.

The joint employer concept does not deprive farms or other businesses of the ability or right to engage labor contractors or other intermediaries such as staffing agencies. Nor does it prevent businesses from entering into agreements that require labor contractors to comply with all employment-law obligations, purchase liability insurance against employment-law claims and hold the larger business harmless for any litigation and liability that may result.

Joint employer liability creates an incentive to ensure that a business selects its labor contractors, as well as its directly-hired supervisors, wisely and ensures compliance with employment laws. In addition to ensuring protections for workers, joint employer liability helps protect law-abiding businesses from unfair competition by unscrupulous employers that keep their labor costs low by using labor contractors that violate employment-related obligations. The joint employer concept is an important, longstanding approach to minimizing sweatshops and its elimination would result in a return to an era in which sweatshops are more prevalent.

The joint employer concept also helps create consumer confidence regarding their purchases. People want to feel good about the food they eat. Agriculture has a reputation for poor treatment of farmworkers that would be exacerbated by the increases in abuses that would flow from this legislation.

Congress should reject the Save Local Business Act because it contradicts 130 years of experience in preventing sweatshops in factories and at least 50 years of consensus regarding policies needed to remedy and prevent abuses of the people who labor on our farms and ranches to produce our food.

Ms. FOXX. Mr. Speaker, before I yield to the gentleman from Texas (Mr. CUELLAR), I want to take just a minute to express my deepest sympathy to him, as the representative of the people of Sutherland Springs, for this Sunday's tragic events. He is here today to do the job they sent him to do, but we all know his heart is very much in that community. I thank him for being here, and I hope he knows that so many people are praying for him and the people he represents.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. CUELLAR).

Mr. CUELLAR. Mr. Speaker, I thank the chairwoman for her condolences and her prayers for Sutherland Springs.

Mr. Speaker, I also thank Mr. BYRNE and, of course, Chairman FOXX, for their work on this particular bill. I thank Mr. CORREA, Mr. PETERSON, and the other supporters of this legislation.

Prior to August 2015, the joint employer standard used by the NLRB

made it easy to understand who is and who is not a joint employer. For decades, a joint employer relationship existed when one company exercised ''direct and immediate'' control over another company's workforce.

However, as you know, under the case Browning-Ferris Industries, the NLRB departed from many years of legal precedent in August of 2015 by establishing a new, expanded joint employer standard. This standard could trigger employer liability by a company exercising vaguely defined indirect control over an employee.

We have heard from local businesses from my district and across the State of Texas, and it is clear that this decision is causing them significant confusion.

In my district—let's say in Laredo, Texas, there is a local restaurant owner who says that his restaurant currently employs close to 1,000 local employees.

□ 1700

This expanded joint employer standard has limited his investment in his business and the number of workers that he has. Reverting back to the former joint employer standard that we had for so many years would allow him to hire the employees that he needs to hire and reinvest money.

This new expanded standard makes it difficult for local franchisees like this one in Laredo to offer the employer relationship support from franchisers for the fear that these benefits could be used against them in a joint employer lawsuit.

Those fears are well founded. For example, the Progressive Policy Institute, known for its pragmatic ideas, says that the expansion of this joint employer doctrine ''may do more harm than good.''

This is why I am supporting this legislation. We are asking that it revert back to the legal standard that we used for many years.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. TAKANO), the ranking member of the Subcommittee on Workforce Protections.

Mr. TAKANO. Mr. Speaker, I thank the ranking member for yielding and for his continued leadership on behalf of America's workers.

Mr. Speaker, more and more employees today are working for a company whose name is not on the front of their office building. Instead of hiring employees directly, companies are renting employees from staffing agencies. Let me say that again. Companies are renting employees from staffing agencies and then evading responsibility for upholding the rights of those workers, even as they profit from their work.

For decades, sensible joint employment standards under the Fair Labor Standards Act have ensured that workers can hold employers accountable for violating wage and hour laws.

Instead of refining those standards to reflect the complex relationship between workers and employers in today's economy, this legislation sets a dramatically and intentionally narrow standard so that no large corporation can be held accountable if their contractors violate workplace laws.

Mr. Speaker, I include a letter of support in the RECORD, a letter by the National Employment Law Project and signed by more than 200 organizations opposing H.R. 3441 because it opens the door to widespread wage theft and hurts law-abiding small businesses.

Hon. PAUL RYAN,
House of Representatives,
Washington, DC.
Hon. NANCY PELOSI,
House of Representatives,
Washington, DC.
Hon. VIRGINIA FOXX,
House of Representatives,
Washington, DC.
Hon. ROBERT C. SCOTT,
House of Representatives,
Washington, DC.

DEAR SPEAKER RYAN, LEADER PELOSI, CHAIRWOMAN FOXX AND RANKING MEMBER SCOTT: The undersigned organizations write in opposition to H.R. 3441, the so-called Save Local Business Act, which would amend the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA) to prevent workers from holding more than one employer jointly accountable for wage theft, child labor, equal pay violations, or unfair labor practices even when the employers jointly exercise and share control over working conditions.

Under our nation's long-standing laws dating back as far as the late 1800s, employers who share control with their subcontractors over working conditions may also share accountability as joint employers for violations of workers' rights so that they will provide better oversight of working conditions, and in so doing, ensure broader compliance with basic labor and employment laws.

H.R. 3441 seeks to dramatically narrow the long-standing definitions of ''employer'' in the FLSA and NLRA and it is neither good for workers nor for law-abiding businesses.

H.R. 3441 OPENS THE DOOR TO WIDESPREAD WAGE THEFT AND WORKER HARMS IN OCCUPATIONS ACROSS THE ECONOMY, INCLUDING IN OUR NATION'S GROWTH INDUSTRIES

The bill would undermine protections for millions of workers across the economy, especially in low-wage sectors where subcontracting is common: construction, agriculture, garment, janitorial, home care, delivery and logistics, warehousing, retail, temp and staffing, and manufacturing, just to name a few.

Wage theft and other workplace dangers are prevalent in many of these jobs, and even under current law, millions of workers today are no longer sure who their boss is—and indeed, have no way to navigate the intricacies of companies' contracting relationships to ascertain who is responsible for workplace violations. When there's no clear line of accountability, work conditions are more likely to deteriorate: pay declines, wage theft increases, and workplace injuries rise. In addition, outsourced jobs pay less—sometimes as much as 30 percent less—than in-house jobs, likely due to a lack of worker and subcontractor bargaining power. In today's economy, we should be looking for ways to increase workers' pay and economic security, not laying the groundwork for more sweatshops.

When a subcontractor cannot pay, joint employer standards ensure that workers have remedies against the contracting company for the legal violations. Workers should be able to recover when cheated out of wages, exposed to dangerous working conditions, or otherwise treated unlawfully.

This bill would also impede workers from bringing equal pay claims to close the gender pay gap. Because the Equal Pay Act is a part of the FLSA, and uses the FLSA's definition of an employer, H.R. 3441 would make it harder for subcontracted workers to hold their employers accountable for gender-based pay discrimination.

THE BILL ACTUALLY HURTS, NOT HELPS, LAW-ABIDING SMALL BUSINESSES

Although framed as a bill to help protect the independence of small businesses, including those that operate as franchisees, the bill would in fact insulate corporations, including franchisors, from liability. Unscrupulous businesses that employ abusive labor contractors to cheat workers would gain a competitive advantage over law-abiding businesses. In addition, franchisees whose business practices are all but dictated to them by larger corporations will be hung out to dry for decisions that aren't their own, without any indemnification from the entity that often all but forces labor and employment violations on them.

Corporations that engage low-road contractors and then look the other way gain an unfair advantage over companies that play by the rules, resulting in a race to the bottom that rewards cheaters. It's one reason why the job quality of what were formerly middle-class jobs in America is suffering today. Working people struggle enough in today's economy.

Don't let Congress make this worse by legislatively rigging the system in favor of corporations that don't care about the workers who build their businesses. Oppose H.R. 3441.

Sincerely,

9to5 Colorado; 9to5 Wisconsin; 9to5, National Assoc of Working Women; A Better Balance; Advocates for Basic Legal Equality, Inc.; AFL-CIO; American Federation of State, County and Municipal Employees (AFSCME); American Federation of Teachers, AFL-CIO; Arizona Employment Lawyers Association; Asian American Legal Defense and Education Fund; Barkan Meizlish LLP; Bricklayers & Allied Craftsmen Local 3 MA/ME/NH/RI; California Employment Lawyers Association; Center for Law and Social Policy (CLASP); Center for Popular Democracy; Center for Worker Justice of Eastern Iowa.

Centro de los Derechos del Migrante, Inc. (CDM); Centro Legal de la Raza; Change to Win; Chicago Jobs Council; Cincinnati Interfaith Workers Center; Coalition for Social Justice; Coalition of Labor Union Women; Coalition on Human Needs; Colorado Fiscal Institute; Columbia Legal Services, Washington State; Communications Workers of America (CWA); Community Labor United; Community Legal Services in East Palo Alto; Community Legal Services of Philadelphia; Community, Faith & Labor Coalition, Indianapolis; Congregation of Our Lady of Charity of the Good Shepherd, US Provinces.

Congregation of Our Lady of the Good Shepherd, US Provinces; Connecticut Legal Services, Inc.; Council on American-Islamic Relations (CAIR); Democratic Socialists of America; Demos; Disciples Center for Public Witness (Disciples of Christ); Economic Policy Institute Policy Center; Economic Progress Institute; El Comite de Apoyo a los Trabajadores Agrícolas; Employee Rights Center; Equal Justice Center;

Equal Rights Advocates; Fair Work Center; Fair World Project; Faith and Justice Worker Center; Family Values @ Work; Farmworker Association of Florida.

Farmworker Justice; Florida Legal Services, Inc.; Food Chain Workers Alliance; Forward Community Investments; Franciscan Action Network; Friends Committee on National Legislation; Fuerza del Valle Workers' Center; Fuerza Laboral; Futures Without Violence; Genesis Masonry Contracting, LLC; Getman, Sweeney & Dunn, PLLC; Good Jobs First; Good Jobs Nation; Greater Boston Legal Services; Greater Hartford Legal Aid, Inc.

Greater Rochester Coalition for Immigration Justice; Greater SE Mass Labor Council; Hardin & Hughes, LLP; Head Law Firm, LLC; Hudson Valley Justice Center; Immigrant Solidarity DuPage, Casa DuPage Workers Center; Immigrant Worker Center Collaborative (IWCC); In The Public Interest; Indianapolis Worker Justice Center; Interfaith Coalition for Worker Justice of South Central WI; Interfaith Worker Justice; International Brotherhood of Teamsters; International Federation of Professional & Technical Engineers (IFPTE); International Union of Painters and Allied Trades District Council 35; IWJSD.

Jewish Community Relations Council, Milwaukee; Jobs With Justice; Justice in Motion; Kansas City Workers' Rights Board of Missouri Jobs with Justice; Kentucky Equal Justice Center; Kids for College; Kids Forward; Labor Justice Committee; Labor Project for Working Families; Laundry Workers Center; Lebau and Neuworth; The Leadership Conference on Civil and Human Rights; Legal Aid at Work; The Legal Aid Society.

Legal Services of Central New York; Legal Voice; Local 3, Bricklayers & Allied Craftsmen; Los Angeles Alliance for a New Economy; Madison-area Urban Ministry; Main Street Alliance; Maine Labor Group on Health; Maine Women's Lobby; Maintenance Cooperation Trust Fund; Massachusetts Coalition of Domestic Workers; Massachusetts Interfaith Worker Justice; Massachusetts Law Reform Institute; MassCOSH (Massachusetts Coalition for Occupational Safety & Health); Mechanic Law Firm, Portland OR; Metrowest Worker Center; Miami Workers Center.

Michigan League for Public Policy; Missouri Jobs with Justice; Moms Rising; NAACP; National Advocacy Center of the Sisters of the Good Shepherd; National Asian Pacific American Women's Forum (NAPAWF); National Center for Law and Economic Justice; National Center for Transgender Equality; National Council for Occupational Safety and Health; National Council of Churches; National Domestic Worker Alliance; National Education Association; National Employment Law Project; National Employment Lawyers Association; National Guestworker Alliance; National Immigration Law Center.

National LGBTQ Task Force; National Partnership for Women & Families; National Women's Law Center; National Workrights Institute; NETWORK Lobby for Catholic Social Justice; New Haven Legal Assistance; New Jersey Citizen Action; New Jersey Policy Perspective; New Jersey Time to Care Coalition; New Jersey Work Environment Council; New Labor; New Mexico Center on Law and Poverty; New Mexico Voices for Children; North Carolina Justice Center; NWA Workers' Justice Center; Oregon Center for Public Policy.

Oxfam America; Patriotic Millionaires; Phillips Dayes Law Firm PC; Pilipino Workers Center of Southern California; Policy Matters Ohio; PolicyLink; Pride at Work; Progressive Congress Action Fund; Project IRENE; Public Citizen; Public Justice Center; Restaurant Opportunities Centers United; Safe Harbor Law, LLC; Sargent Shriver National Center on Poverty Law; SE Mass Building Trades Council; SEIU Local 888.

Service Employees International Union; South Central Federation of Labor, AFL-CIO; South Florida AFL-CIO; South Florida Interfaith Worker Justice; Southern Poverty Law Center; St. Louis Workers Rights Board, Missouri Jobs with Justice; Stephan Zouras, LLP; Teamsters Joint Council 7; Teamsters Local Union 350; Teamsters Local Union 469; The Commonwealth Institute for Fiscal Analysis (Virginia); The Law Offices of Gilda A. Hernandez, PLLC; The North Dakota Economic Security and Prosperity Alliance; The Rhode Island Center for Justice; The Stolarz Law Firm; The Warehouse Worker Resource Center.

UltraViolet; Union for Reform Judaism; Union of Rutgers Administrators, AFT Local 1766; Unitarian Universalist Association; United Auto Workers (UAW); United Community Center of Westchester, Inc.; United Food and Commercial Workers International Labor Union; United Food and Commercial Workers Union Local 1445; United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied; Industrial and Services Workers International Union (USW); Washington State Budget & Policy Center; Wayne Action for Racial Equality; WeCount!; Werman Salas PC; West Virginia Center on Budget and Policy; Winebrake & Santillo, LLC.

Wisconsin Alliance for Retired Americans; Wisconsin Alliance for Women's Health; Wisconsin Coalition Against Sexual Assault; Wisconsin Community Program Association (WISCAP); Wisconsin Council of Churches; Wisconsin Faith Voices for Justice; Wisconsin Network for Peace, Justice, and Sustainability; Women Employed; Women's Law Project; Workers' Center of Central New York; Workers Defense Project; Workers' Rights Center of Madison WI; Workers' Rights Project, Main Street Legal Services. Inc; Working Families Party; Working Partnerships USA; Workplace Fairness; Workplace Justice Project at Loyola College of Law Clinic; Worksafe; WV Citizen Action Group; Yezbak Law Offices.

Mr. TAKANO. Mr. Speaker, from 2001 to 2013, Wal-Mart was contracting with three warehouses in my community, and those warehouses contracted out their staffing to a company that was accused of committing egregious wage and hour law violations.

Thanks to the FLSA joint employer standard, 1,700 warehouse workers were able to reach a $22 million settlement to collect the pay that they were owed from their employer. Under this bill, they would likely have gotten nothing.

The questions we face today are: Will millions of workers, like the warehouse workers in my district, lose what little power they have left to fight against wage theft; will organized workers lose the basic right to bring all responsible parties to the table to collectively bargain for better wages and workplaces; will shrewd corporations be allowed to claim immunity from the laws that protect employees; and, most of all, will the people's House stand with the people or stand with the corporations that continue to rig the economy against the American worker?

Mr. Speaker, I strongly urge my colleagues to oppose H.R. 3441.

Ms. FOXX. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), the chair of the Small Business Committee.

Mr. CHABOT. Mr. Speaker, I rise today in strong support of H.R. 3441, and I want to commend our colleague, Mr. BYRNE, for sponsoring this legislation. I also want to commend Chairwoman FOXX for her leadership on this very important issue. I am proud to be an original cosponsor myself.

As chairman of the House Small Business Committee, I have had the opportunity to see firsthand how the National Labor Relations Board's new joint employer standard threatens the ability of small-business owners to remain independent and responsible for their own employees.

At a Small Business Committee hearing last year, an Army combat veteran and small-business owner testified that: ''Local business owners may effectively be demoted from entrepreneur to middle manager, as they are gradually forced to forfeit operational control of the stores, clubs, inns, or restaurants that they built.''

At the same hearing, another small-business owner testified that: ''I would cease to be an independent small-business owner . . . ultimately, I would become a de facto employee of the corporate brand.''

These are merely two examples of the consequences real American small-business owners face because of the decisions of Washington bureaucrats and activist judges. The Obama-era joint employer scheme threatens small businesses, the engines of American economic growth.

Small businesses, after all, create the majority of the new jobs in this Nation; they spur innovation.

Enacting this legislation would help ensure continued freedom for America's best job creators.

Mr. Speaker, I urge my colleagues to support H.R. 3441. Passage of this legislation is necessary to restore certainty to America's small-business owners and their employees so that they can continue to operate their businesses locally and independently.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. NORCROSS).

Mr. NORCROSS. Mr. Speaker, I include in the RECORD two letters of opposition, one from the North America's

Building Trades Unions, and one from the United Brotherhood of Carpenters and Joiners of America.

NORTH AMERICA'S BUILDING TRADES UNIONS,
Washington, DC, November 6, 2017.

DEAR REPRESENTATIVE: On behalf of the 3 million skilled craft professionals who comprise the 14 national and international unions of North America's Building Trades Unions (NABTU), I urge your opposition to H.R. 3441, the Save Local Business Act. If enacted this piece of legislation would have a devastating impact on the construction industry which is dependent upon a variety of contractor and subcontractor relationships.

Unfortunately, many low road contractors in the construction industry are becoming increasingly skilled in shielding themselves from legal liabilities through layers of subcontractors. Contractors use subcontractors or labor brokers that either pay their employees off the books or intentionally misclassify them as 1099 subcontractors. When that is done, income taxes are not deducted, and Social Security and Medicare taxes are not paid, as well as unemployment contributions, workers' compensation premium and overtime.

H.R. 3441 purports to save businesses by making it extremely difficult for the National Labor Relations Board (NLRB) and U.S. Department of Labor to find employers jointly liable for violations of the law. If enacted it would have the unintended consequence of promoting a low road contracting model in which those who willfully commit labor violations are unaccountable, to the disadvantage of law-abiding employers and their employees.

This piece of legislation would further induce bad actors to perfect their efforts to undermine the labor standards in our industry, making it more challenging for American workers to achieve access to the middle class. It would also create a competitive disadvantage to high road contractors who obey the law. As such, I strongly urge your opposition to this harmful legislation.

Sincerely,

SEAN MCGARVEY,
President.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Washington, DC, September 19, 2017.

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

Hon. VIRGINIA FOXX,
Chair, Committee on Education and the Workforce, Washington, DC.
Hon. ROBERT C. SCOTT,
Ranking Member, Committee on Education and the Workforce, Washington, DC.

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.

H.R. 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 81 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.

Mr. NORCROSS. Mr. Speaker, I thank Ranking Member SCOTT for yielding.

Mr. Speaker, I rise in strong opposition to H.R. 3441, which is falsely called Save Local Business Act. The new name should be ''Crush Local Workers Act.''

I am happy to work with my colleagues on the other side of the aisle. I look forward to helping small businesses and helping them raise wages, but this bill does neither. It empowers corporations, and it depresses wages.

Employers are relying more and more on subcontractors and permanent temporaries. These temporary staffing agencies employ around 3 million people. That is about one-fifth of all the new jobs created since 2009.

I have fought to raise wages for over two decades for workers. This bill lets corporations keep wages low by subcontracting out their work. They are subcontracting their conscience to put profits over people.

This bill makes it nearly impossible for workers to hold temporary staffing agencies responsible for unfair labor practices or wage theft. It denies employees a voice in the workplace. It prevents workers from joining unions, collective bargaining, which go ultimately to help raise wages.

We should be lifting workers' wages up, not trying to crush them.

I will remind our colleagues that, from 1930 to 1984, the courts were the ones who were making these joint employer decisions, and it was Ronald Reagan's administration who first made this change. It was the Reagan administration who first made this change.

The Obama administration brought it back to where it was, yet, apparently, people are forgetting those very important facts.

Mr. Speaker, that is why I urge my colleagues to vote against this crush local workers act.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. ROE), the distinguished chair of the Veterans' Affairs Committee.

Mr. ROE of Tennessee. Mr. Speaker, I rise today in support of H.R. 3441, the Save Local Business Act.

Mr. Speaker, this debate boils down to whether we want local entrepreneurship and community engagement through the franchise model or a one-size-fits-all, top-down model.

When I served as chairman of the HELP Subcommittee, we heard testimony about the effect of this new joint employer standard from Mr. Ed Braddy, who owns a Burger King in inner-city Baltimore. Many of the men Mr. Braddy hires to work at his store have had a run-in with the criminal justice system, and several of the women he hires has been on some form of government assistance.

He hires people to give them an opportunity at a better life, as he described it.

If the new joint employer standard proceeds, the Burger King corporation will be liable for many of the hiring decisions that are made by Mr. Braddy. Why would we expect any corporation to know a community better than someone like Mr. Braddy, who grew up there? Shouldn't we expect that a corporate entity would be more risk averse and less likely to give people a second chance?

Think about the incredible story Mr. Braddy has to tell. He dropped out of high school in the 11th grade before returning when his life was headed in the wrong direction, according to him. He joined the Baltimore Police Department, and then he began working in a Burger King. After the first Burger King he owned closed, he ultimately rejoined Burger King and purchased his current store.

What is remarkable is when Baltimore experienced unrest several years ago, Mr. Braddy's store was at the epicenter, his neighbors stood outside to protect it from being destroyed, and his was one of the only restaurants open for business the next day.

Mr. Speaker, if this is not the American Dream, I don't know what is. On a recent trip that our conference took there, including the chairwoman, we dined with Mr. Braddy at his restaurant in Baltimore. He was a wonderful host, I might add.

Joint employer isn't just about restaurants. Hotel owners, fitness companies, movers, tutoring services, janitorial services, and the list goes on and on, anyone who franchises their business is affected by this ruling.

I am pleased the Labor Department is reviewing this standard, but this can't be a constantly changing standard while long-term damage is done to local entrepreneurship.

Mr. Speaker, I urge my colleagues to support the joint employer standard that protects workers and allows the franchise model to flourish.

Mr. SCOTT of Virginia. Mr. Speaker, could you advise us as to how much time is remaining on both sides.

The SPEAKER pro tempore (Mr. COFFMAN). The gentleman from Virginia has 13½ minutes. The gentlewoman from North Carolina has 15 minutes.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, I include in the RECORD page 50 of the committee report, which outlines the exchange with Mr. Braddy, which suggests that the franchisors do not become joint employers under the present law.

In an exchange between Representative Guthrie and Ed Braddy, a Burger King franchisee testifying on behalf of the International Franchise Association, Mr. Braddy was asked:

Representative Guthrie: Do you or do [sic] the franchisor hire and fire and determine the work of your employees?

Mr. Braddy: I schedule interviews every other Wednesday. I sit down with eight people every other Wednesday. Even though I am not hiring, I do the interviews because I always like to have a waiting list of people who want to work. So I do all the hiring. I don't allow my managers or my assistants to terminate anyone because I want to make sure that once I let someone go it is for a good reason.

Mr. Guthrie: But it is you as the business owner, not the—what role does the franchisor play in any of your—those issues?

Mr. Braddy: None at all.

Based on this testimony, nothing in the Browning Ferris decision could establish that these franchisors are exercising sufficient control to be deemed a joint employer with their respective fanchisees.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut (Ms. DELAURO), the ranking member of the Labor-Health and Human Services Appropriations Subcommittee.

Ms. DELAURO. Mr. Speaker, I rise in strong opposition to this bill, which would overturn the National Labor Relations Board's joint employer decision. It will make it harder for working people to hold employers accountable for abuses, including making it harder to bring Equal Pay Act claims.

In 2015, the National Labor Relations Board ruled in their Browning-Ferris decision that a company can be held liable for labor violations by other employers they contract with.

This definition of joint employers reflects the reality that subcontractors in the workforce face today. In fact, according to the Economic Policy Institute: ''The most rigorous recent estimates find that the share of workers being subcontracted out was 15.8 percent in late 2015. In today's labor market, that translates into roughly 24 million workers.''

The bill we are debating today would fly in the face of the 2015 decision, undermining employee protections.

This bill would create a more narrow and restrictive definition of a joint employer; it would limit workers' ability to hold employers responsible for violations under the National Labor Relations Act, such as attempts to stop collective bargaining; or the Fair Labor Standards Act, such as wage theft, equal pay violations.

Let me talk about what this would mean in just one area: pay discrimination. Pay discrimination in the workplace is real; it is happening everywhere.

□ 1715

Pay inequity does not just affect women; it affects children, families, and our economy as a whole. That is because women in this country are the sole or co-breadwinners in half of the families with children.

The biggest problem facing our Nation today is that families are not making enough to live on. They are not being paid enough in the jobs that they have. Closing the wage gap would help to address that problem.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SCOTT of Virginia. I yield the gentlewoman from Connecticut an additional 1 minute.

Ms. DELAURO. Why would we further undermine a worker's ability to bring pay discrimination cases against their employer? We must stand with workers, defend the current definition of joint employers.

To those who claim that joint employer status is burdensome or confusing for companies, let me just ask you: What about the burden on millions of Americans who are experiencing pay disparity and pay discrimination?

I urge my colleagues, reject this bill. Take a stand for equal pay, for equal work.

Mr. Speaker, I include in the RECORD a letter from our labor leaders rejecting H.R. 3441.

JULY 28, 2017.

DEAR REPRESENTATIVE: We, the undersigned unions representing millions of American workers, are writing to urge you to not support H.R. 3441, the joint employer bill introduced by Representatives Bradley Byrne and Chairwoman Virginia Foxx of the House Committee on Education and the Workforce, which would eliminate the National Labor Relation Board's (NLRB) decision in Browning-Ferris, and greatly restrict the definition of employer under the Fair Labor Standards Act. Congress should be working to strengthen the rights of working people and raise wages. The legislation would accomplish the opposite.

Over the past few decades, the middle class has been struggling to stay afloat. As wages have often been stagnant or declining, more and more companies have used middlemen from staffing agencies, labor contractors and to subcontractors to maintain low wages, avoid accountability and prevent a large percentage of workers from organizing. It is important that when workers try to remedy illegal employment practices or organize to join a union that the party calling the shots is at the table and part of the remedy. And indeed, the current state of the law under both under the National Labor Relations Act and the FSLA balances the interests of workers and employers by requiring a fact specific inquiry to determine whether or not there is a joint employer relationship.

This bill seeks to legislate around a century of consistent case law and established joint employer standards in labor and employment law. It redefines the term 'employer' so narrowly that many workers will have no remedy when their employers violate their union rights or wage laws.

The legislation would overturn the Browning Ferris NLRB decision, a case which found a joint employer relationship between Browning Ferris and Leadpoint their subcontractor. In this case, Browning-Ferris, Inc. (BFI), the employer, controlled the speed of the conveyor belt where employees of contractor Leadpoint sorted materials, prohibited Leadpoint from raising wages above a specified cap without BFI's permission, and determined the shift times and the number of people on shifts. Since Leadpoint was unable to negotiate these employment terms among others without BFI approval, the NLRB found BFI must be at the bargaining table along with its subcontractor in order for the union to negotiate a meaningful collective bargaining agreement. The decision was fact specific and in keeping with the realities of today's workplace.

Further, the bill would drastically change the definition of employment relationships under the FLSA which recognizes that more than one business can be an employer. Currently, under the FLSA employers cannot hide behind labor contractors or franchisees, when they set critical conditions of employment. Because the Migrant and Seasonal Agricultural Worker Protection Act refers to the definition of ''employ'' in the FLSA, this bill will also impact farm workers seeking to redress wage theft and other employment abuses. It is the FLSA definition of employ that has allowed workers to effectively enforce child labor and other laws and to effectively address sweatshops for decades. Today, it is this definition that offers workers hope that when they organize for a union and better wages that the party that can actually effectuate change is at the table.

We urge you to weigh the interests of workers and stand with them in opposing legislation that would rollback the NLRB's decision and restrict workers' rights under the law.

Sincerely,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT).
SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU).
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW).
UNITED FARM WORKERS OF

AMERICA (UFW).
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW).
UNITED STEELWORKERS (USW).

Ms. FOXX. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Kansas (Mr. ESTES).

Mr. ESTES of Kansas. Mr. Speaker, I rise today in support of H.R. 3441, the Save Local Business Act.

Too often, under the previous administration, radical policy shifts were taken by unelected bureaucrats and activist judges, which harmed our society. An example of this was in 2015, when the National Labor Relations Board decided to unilaterally change a longstanding definition of what constitutes an employer-employee relationship. That changed the definition of a joint employer from an employer that has ''actual, direct, or immediate'' control over the terms and conditions of employment to someone who has ''potential'' or ''indirect'' control. It should be obvious to you who your employer is. It is the one who hired you and who signs your paycheck.

As Chairwoman FOXX said in a recent op-ed: ''When you have a hammer, everything looks like a nail.'' That is so true for so many in Washington.

I encourage my colleagues to support this bill because it defines joint employer in a commonsense way in order to do away with the current, convoluted status. This bill will also prevent future overreach from bureaucrats, and allows businessowners to manage their own businesses.

Mr. SCOTT of Virgina. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. BRENDAN F. BOYLE).

Mr. BRENDAN F. BOYLE of Pennsylvania. Mr. Speaker, this bill, H.R. 3441, cripples the right to bargain for better wages and conditions when workers have joint employers. By narrowing the definition of a joint employer, this bill deprives thousands of workers of their right to negotiate with the parties that really exercise control over their wages and conditions; and by undermining collective bargaining, this bill suppresses wages.

One of the biggest problems, if not the biggest problem in the economy today, has been the lack of wage growth over the last decade to two decades. This bill will not improve that problem. It will take an existing problem and make it worse.

Today, workers are under a direct threat from reckless, misleading legislation like this; and that, ultimately, will do nothing to improve their wages, improve their benefits, or improve their working conditions.

Let's reject this bill and, instead, discuss and debate and craft legislation that can improve workers' wages.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. FRANCIS ROONEY).

Mr. FRANCIS ROONEY of Florida. Mr. Speaker, I thank Chairman FOXX and Subcommittee Chairman BYRNE for bringing forth this important legislation, the Save Local Business Act.

Construction is a major employer in the U.S. economy, with over 6 million employees, 650,000 employers, creating over $1 trillion worth of construction every year.

Building a project involves a complex web of subcontractors, vendors, and consultants all working together in a spirit of teamwork to accomplish a difficult task.

I have been in this business for 40 years. The general contractor has to put control terms in its subcontracts and purchase orders to make sure that the subcontractors and vendors execute the work safely, on schedule, and in coordination with the other trades on the project. Lastly, they have to follow all the fitness-for-duty provisions to make sure that they pass drug tests and deal with smoking and health safety issues like that.

These requirements run right into this Browning-Ferris standard. There is no way that you could follow the literal words of those court cases and this horrible Obama rule and not have the argument made to you that all these subs and vendors are part of a common enterprise.

Now employers, including myself and my employees, are left in a big quandary as to their status under Browning-Ferris, under the Obama rule. I can see a scenario where a batch plant located clear across town from a construction project could have a hazardous waste problem. Because of this ridiculous rule, my job or someone else's job using that batch plant to supply concrete could be linked to them. How perverse is that?

So the Save Local Business Act will fix this abuse and be beneficial not only to the American economy, but to the safety and well-being of American workers. I urge my colleagues to support this practical fix to this egregious action, and I thank Chairman BYRNE for introducing this legislation.

Mr. SCOTT of Virgina. Mr. Speaker, I yield 1 minute to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Mr. Speaker, I rise in opposition to this bill, which basically says companies should be protected, not workers.

Imagine, when a firm is jointly owned and operated by the Chinese or the Mexicans or the El Salvadorans, where workers' rights are never protected.

Worker protections in America have long accounted for the reality that the company who writes the check isn't always the company that controls workplace conditions, but if they share control over workplace conditions, they should be held jointly responsible for violations.

I include in the RECORD a letter from the United Auto Workers talking about the parts industry.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,

Washington, DC, November 7, 2017.

DEAR REPRESENTATIVE: On behalf of the more than one million active and retired members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), I strongly urge you to oppose H.R. 3441, the ''Save Local Business Act.'' This ill-conceived bill would make it more difficult for workers to join together and collectively bargain to improve working conditions and raise living standards. This is a bad bill for working people because it would make it even easier for businesses to replace full time jobs with precarious temporary employment.

H.R. 3441 overturns long established case law and joint employer standards found in labor and employment law. It does this by redefining the term 'employer' in a way that would make it nearly impossible for workers to hold their employers accountable when their rights are violated.

Disturbingly, businesses and large corporations throughout our economy have avoided responsibility to their employees by hiding behind staffing agencies to claim they are not technically their employer. The net result for working people has been lower wages and fewer job protections. For example, within the auto parts manufacturing sector, the National Employment Law Project (NELP) estimates that temporary workers earn, on average, 29% less than direct employees of manufacturers. We have seen how, in the automotive sector, multinational corporations often hire temporary workers, who work side by side, doing the same job, for years, with full time workers and earning significantly less.

H.R. 3441 would also overturn the National Labor Relations Board's (NLRB) in Browning-Ferris. The Browning-Ferris decision was good for working families because it established that workers could negotiate with their true employer under fact specific circumstances. In that case, a subcontractor for Browning-Ferris Industries (BFI), Leadpoint, was unable to negotiate several basic employment terms without permission from BFI. The NLRB sensibly found that BFI must be at the bargaining table along with its subcontractor Leadpoint. Under the terms of this bill, that would not be the case when similar disputes arise in the future.

Economic inequality and a shortage of good paying jobs has hurt working people and our economy for decades. Unfortunately, H.R. 3441 would make a bad situation worse. Congress should reject this bill and instead work to create more jobs you can sustain a family on.

Sincerely,

JOSH NASSAR,
Legislative Director.

Ms. KAPTUR. Mr. Speaker, there couldn't be a more dangerous industry to work in. Do you want to put some of these foreign companies in charge of worker safety in those places? Not I. I have seen too many mangled bodies in places around the world that tell me no.

I am for workers being protected as well as the interests of corporations. Today's action eliminates 80 years of safeguards, safeguards on joint employer responsibility.

What does that mean? It means that a company that subcontracts or franchises work to save a buck can shield

itself when workers aren't paid fair wages or are denied basic employment rights.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SCOTT of Virgina. I yield the gentlewoman from Ohio an additional 30 seconds.

Ms. KAPTUR. Small businesses and workers suffer while large corporate interests escape accountability.

Mr. Speaker, it is time we pass laws that help American workers. Wouldn't that be a sea change in this country?

I urge my colleagues to oppose this legislation.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan (Mr. MITCHELL).

Mr. MITCHELL. Mr. Speaker, I rise to urge support for H.R. 3441, the Save Local Business Act.

I spent my career in business, so I know how damaging uncertainty is for businesses. Job creators need a clear understanding of the rules; otherwise, businesses and employees suffer and our economy suffers.

In yet another incident of unelected bureaucrats overreaching their authority, the NLRB redefined the rule defining joint employers which had been in place for 30 years. Unfortunately, I was not surprised.

The NLRB created a maze of uncertainty. Basic business decisions managed between employers and employees are now put into turmoil by the NLRB redefining what an employer is.

The Save Local Business Act would roll back a convoluted joint employer scheme, restore a commonsense definition of employer, and protect workers and local employees who are most likely to be impacted by yet another confusing Federal rule.

I urge support of the bill.

Mr. SCOTT of Virgina. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, once again the Republican majority is offering a bill that would harm working families. It has nothing to do with saving local businesses, small businesses, and has everything to do with limiting workers' rights and taking away workers' wages.

Between 2005 and 2015, 94 percent of net job growth was in alternative work like temporary, contract, and on-call jobs. This isn't our parents' workplace anymore, where one employer sets the rules and pays the wages. Today, a corporation can set workplace rules while a temp agency or subcontractor pays the wages. Today's workers need to be able to bargain with both and to hold each accountable for labor law violations.

Instead, this bill moves us backward. It would prevent working men and women from bargaining for better wages and benefits and safer working conditions with the corporations that have decisionmaking power over their workplace.

It would allow corporations to rob working women and men of their earned wages without giving those workers the right to recover. The annual cost of wage theft is estimated at $50 billion this year.

It would immunize bad corporate actors and put small and big businesses who respect their workers at a competitive disadvantage.

This bill is a bad deal, and workers know it.

I include in the RECORD a letter from the AFL–CIO and its 12 million members.

If you support better wages and better jobs, vote ''no'' on this bad bill.

AFL–CIO

Washington, DC, November 6, 2017.

LEGISLATIVE ALERT

DEAR REPRESENTATIVE: On behalf of the 12 million working women and men represented by the unions of the AFL–CIO, I am writing to urge you to oppose H.R. 3441, the ''Save Local Business Act.''

Proponents of the legislation claim that it is designed to repeal the National Labor Relations Board's (NLRB's) 2015 decision in Browning Ferris Industries, in which the NLRB clarified its legal test for determining whether two employers are joint employers of certain employees. In fact, H.R. 3441 rolls back worker protections so they are weaker than when Congress adopted the National Labor Relations Act in 1935 and the Fair Labor Standards Act in 1938. It is harmful legislation that will undermine workers' pay and protections on the job.

Browning Ferris concerned a group of workers on a recycling line at a facility owned and operated by Browning Ferris. The workers were supplied by a staffing agency—Leadpoint. Browning Ferris controlled the facility, set the hours of operation, dictated the speed of the recycling line, indirectly supervised the line workers, and had authority over numerous other conditions of employment. In order to ensure that the employees' right to form a union and bargain over workplace issues was protected, the NLRB held that Browning Ferris was a joint employer of the line workers along with Leadpoint. This fact-intensive decision reflected the realities of the arrangement at Browning Ferris and was rightly decided in order for the line workers to have a meaningful right to bargain over their terms and conditions of employment.

Before the ink was dry on the Browning-Ferris decision, business groups and Republicans in Congress began attacking the decision, claiming it dramatically changed the law and undermined the franchise business model. (Browning Ferris is not a franchise case, a fact specifically noted by the NLRB in its decision).

In our view, these attacks on the Browning Ferris decision are overblown and misguided. In today's fragmented workplaces, with perma-temps, contracted workers, agency employees, and subcontracting becoming ever more prevalent, it is more important than ever to make sure our laws protect workers and ensure they receive the wages they are due and that their right to join with their co-workers to bargain for improvements on the job is protected.

H.R. 3441 takes the law in the opposite direction, radically changing both the National Labor Relations Act and the Fair Labor Standards Act by instituting a new test for finding employers to be joint employers that is more restrictive than any agency or court has ever adopted. As a practical matter, the legislation eliminates joint employment from the NLRA and the Fair Labor Standards Act, meaning that many workers in subcontracting or staffing agency arrangements will be left without recourse for wage theft and will have no meaningful bargaining rights. The bill weakens worker protections and allows corporations to evade their responsibilities under the law.

We urge you to reject this harmful and misguided proposal.

Sincerely,

WILLIAM SAMUEL,
Director,
Government Affairs Department.

Ms. FOXX. Mr. Speaker, I yield 1½ minutes to the gentleman from Pennsylvania (Mr. SMUCKER).

Mr. SMUCKER. Mr. Speaker, I rise today to express my strong support for H.R. 3441, the Save Local Business Act.

I have heard from employers across my district in many industries—agriculture, higher ed, staffing agencies, hospitality, and construction—about this issue. Under the flawed NLRB standard, not only employers are confused, but employees, as well, have little certainty as to their status with multiple employers.

Mr. Speaker, for 25 years, I owned and operated a construction company in Lancaster County, and we were operated as subcontractors. Back then, the employer-employee relationship was clear. There was no question about which employer was responsible for each employee.

The Browning-Ferris decision creates confusion about who works for whom, discouraging many larger contractors from giving small subcontractors a job for fear of increased liability. Mr. Speaker, had that existed when I was growing a company, it would have made it more difficult to expand our business and create more jobs in our community.

The Browning-Ferris decision was politically motivated and upended a decades-old standard that worked very well among employers and employees. According to the HR Policy Association, litigation regarding the joint employer standard is at a record high. This decision, Mr. Speaker, has been a jackpot for trial lawyers.

It is time Congress takes action to provide clarity for the thousands of businesses, both large and small, who are ready to expand and create jobs. The Save Local Business Act will provide this clarity, and I urge my colleagues to support this important legislation.

Mr. SCOTT of Virgina. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. LIPINSKI).

Mr. LIPINSKI. Mr. Speaker, yes, there is now uncertainty about the definition of joint employer. This uncertainty has the potential to undermine the franchise model, which has given so many Americans the opportunity to own a business and create millions of jobs.

But this bill goes too far in narrowing the joint employer definition and also applying it to the Fair Labor Standards Act. We need to ensure that workers are treated fairly and companies are held accountable, but I am afraid this bill could weaken that.

While I will be voting against this bill, it is important to recognize that there is a real issue here. We need to find a compromise. So no matter how we vote today, I urge my colleagues to listen to the concerns of businessowners in their districts because their success is critical to our long-term job growth.

□ 1730

Ms. FOXX. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Wisconsin (Mr. GROTHMAN).

Mr. GROTHMAN. Mr. Speaker, before launching into specific comments on this bill, I would like to correct some misconceptions that we heard earlier today.

We just heard a lady from Illinois mention that she felt this bill would put employers who respect workers at a competitive disadvantage. All good employers know that respecting workers puts you at a competitive advantage, and I think it is very wrong that anybody would imply that you are advantaged by not respecting your workers. So I want to clarify that.

The second thing I want to clarify is, earlier we had somebody talk about temporary workers. Now, temporary workers make less money. It is true with temporary workers, you have a middleman who takes the money off the top, and that is unfortunate. But you have to realize that the reason we have more temporary workers is we make it harder and harder to be an employer in the first place. Whenever you make it harder and harder to be an employer, you force more employers to hire temporary employees so they don't have to be employers in the first place.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. FOXX. Mr. Speaker, I yield an additional 1 minute to the gentleman from Wisconsin.

Mr. GROTHMAN. Mr. Speaker, now, on with this bill. One of the tragedies we have had in America is the disappearance of small businesses in America. We had more and more big businesses, you know, big conglomerates. One of the ways you can still be a small business is being a franchisee in which you control your own destiny and are able to respect your workers in your own way.

We have to pass this bill to prevent the end—or the practical end of the ability to be your own businessowner by controlling or setting your own contract terms with your own employees. And more than any other reason, that is why I back this bill. I like that we have so many small-business men out there on their own on the franchisor-franchisee model.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. LYNCH).

Mr. LYNCH. Mr. Speaker, I thank the gentleman from Virginia (Mr. SCOTT) for yielding me this time, and I thank him for his leadership on behalf of the America workers.

Mr. Speaker, I rise to express my strong opposition to H.R. 3441. Because of the modern use of temporary staffing agencies and subcontractors, the National Labor Relations Board has properly defined the term ''joint employer'' as two or more businesses who codetermine or share control over a worker's terms of employment, such as rate of pay or work schedule.

If enacted, H.R. 3441 would cripple workers' rights to collectively bargain or seek redress when workers are found to have joint employers. The opportunity to collectively bargain over wages and conditions of employment is diminished if some parties that control employment are given the option to refuse to bargain and avoid liability as employers.

As a result, this bill will open the door to widespread wage theft and equal-pay violations, and it will harm workers across the United States.

Some of my Republicans continue to argue that H.R. 3441 will provide stability for workers. As a former union president and as a labor attorney dealing with issues before the National Labor Relations Board, I urge my colleagues to stand with the American worker and oppose this disastrous bill.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. FERGUSON), our distinguished colleague.

Mr. FERGUSON. Mr. Speaker, I rise today in support of the Save Local Business Act. I have heard from dozens of businesses and employees in my district that have faced uncertainty under the expanded joint employer definition, which threatens job creation, it increases costs, and discourages entrepreneurs from opening up new businesses.

The National Labor Relations Board's decision ignored decades of settled labor policy by changing the joint employer definition and putting all businesses and their workers at risk. We should be making America the most competitive place in the world to do business, not saddling our job creators with unnecessary and confusing regulations.

This bill would take the right step to reinstate sound, widely accepted standards, and I urge all of my colleagues to support its passage.

Mr. SCOTT of Virginia. Mr. Speaker, how much time is remaining for both sides?

The SPEAKER pro tempore. The gentleman from Virginia has 4 minutes remaining, and the gentlewoman from North Carolina has 7½ minutes remaining.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from Oregon (Ms. BONAMICI), the ranking member of the Committee on Education and the Workforce.

Ms. BONAMICI. Mr. Speaker, I thank Ranking Member SCOTT for yielding.

Mr. Speaker, I rise in opposition to the so-called Save Local Business Act. This administration and this Congress have already weakened workplace protections that keep Americans safe from discrimination at their jobs, and make sure that they receive fair pay and provide additional opportunities to save for a secure retirement.

Joint employer provisions make sure that employers cannot escape liability for violating worker protection laws. This standard makes our laws on overtime pay, on safe workplaces, on minimum wage enforceable.

What this bill does not do is turn franchisors into employers unless they act like employers. I spent years as a lawyer representing franchisees, and I know this won't turn franchisors into employers.

Mr. Speaker, I include in the RECORD a letter from the Signatory Wall and Ceiling Contractors Alliance. They oppose this bill because it would put law-abiding small businesses at a competitive disadvantage with unscrupulous companies that don't respect worker's rights and don't pay workers the wages they have earned.

SIGNATORY WALL AND
CEILING CONTRACTORS ALLIANCE,
SAINT PAUL, MN, *October 5, 2017*.

Hon. PAUL RYAN,
Speaker of the House,
House of Representatives, Washington, DC.
Hon. NANCY PELOSI,
Minority Leader,
House of Representatives, Washington, DC.

DEAR MR. SPEAKER AND LEADER PELOSI: I am writing on behalf of the Signatory Wall and Ceiling Contractors Alliance (SWACCA) to express our strong opposition to H.R. 3441, the ''Save Local Business Act.'' This legislation will not benefit honest small businesses that create good jobs with family-sustaining wages and benefits. It will actually place such employers at a permanent competitive disadvantage to unscrupulous companies that seek to thrive solely at the expense of their workers and taxpayer-funded social safety-net programs.

SWACCA is a national alliance of wall and ceiling contractors committed to working in partnership with our workers and our customers to provide the highest-quality, most efficient construction services. Through the superior training, skill, and efficiency of our workers SWACCA contractors are able to provide both cost-effective construction services and middle class jobs with health and retirement benefits. Our organization prides itself on representing companies that accept responsibility for paying fair wages, abiding by health and safety standards, workers compensation laws, and unemployment insurance requirements.

Unfortunately, however, we increasingly find ourselves bidding against companies that seek to compete solely on the basis of labor costs. They do so by relieving themselves of the traditional obligations associated with being an employer. The news is littered with examples of contractors who have sought to reduce costs by willfully violating the laws governing minimum wage, overtime, workers compensation unemployment insurance, and workplace safety protections. The key to this disturbing business model is a cadre of labor brokers who claim to provide a company with an entire workforce that follows them to job after job. It is a workforce that the actual wall or ceiling contractor controls as a practical matter, but for which it takes no legal responsibility. In this model workers receive no benefits, are rarely covered by workers compensation or unemployment insurance, and are frequently not paid

in compliance with federal and state wage laws. The joint employment doctrine is an important means for forcing these unscrupulous contractors to compete on a level playing field and to be held accountable for the unlawful treatment of the workers they utilize.

As an association representing large, medium, and small businesses, we oppose H.R. 3441 because it proposes a radical, unprecedented re-definition of joint employment under both the FLSA and the NLRA that goes far beyond reversing the standard articulated by the NLRB in Browning-Ferris or returning to any concept of joint employment that has ever existed under the FLSA since the Act's passage. H.R. 3441's radical and unprecedented redefinition of joint employment would proliferate the use of fly-by-night labor brokers by ensuring that no contractor using a workforce provided by a labor broker would ever be deemed a joint employer. This is because the bill precludes a finding of joint employment unless a company controls each ''of the essential terms and conditions of employment (including hiring employees, discharging employees, determining individual employee rates of pay and benefits, day-to-day supervision of employees, assigning individual work schedules, positions and tasks, and administering employee discipline)''. H.R. 3441 goes further by expressly countenancing a company using labor brokers retaining control of the essential aspects of the workers' employment in a ''limited and routine manner'' without facing any risk of being a joint employer.

Simply put, H.R. 3441 would create a standard that would surely accelerate a race to the bottom in the construction industry and many other sectors of the economy. It would further tilt the field of competition against honest, ethical businesses. Any concerns about the prior administration's recently-rescinded interpretative guidance on joint employment under the FLSA or the NLRB's joint employment doctrine enunciated in Browning-Ferris can be addressed in a far more responsible manner. Make no mistake, H.R. 3441 does not return the law to any prior precedents or standards. It creates a radical, new standard. This standard will help unethical employers get rich not by creating more value, but instead by ensuring their ability to treat American workers as a permanent pool of low-wage, subcontracted labor that has neither benefits nor any meaningful recourse against them under our nation's labor and employment laws.

On behalf of the membership of SWACCA, thank you in advance for your attention to our concerns about this legislation. Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

TIMOTHY J. WIES,
President.

Ms. BONAMICI. Mr. Speaker, this legislation would leave workers behind and would give a free pass to unscrupulous companies that violate labor laws. Please oppose this legislation.

Ms. FOXX. Mr. Speaker, I yield 1½ minutes to the gentleman from Virginia (Mr. BRAT).

Mr. BRAT. Mr. Speaker, I rise today to enthusiastically support H.R. 3441, the Save Local Business Act. This bill will return clarity and certainty to all businesses. Small-business owners all around Virginia's Seventh Congressional District have been asking for tax and regulatory relief that will free them from the tyranny of government control.

Take, for example, two employers in my district: a home care franchisee called BrightStar Care of Richmond, and a daycare center called Rainbow Station at the Boulders.

Mark Grasser, president of BrightStar Care, had this to say to me about the unworkable joint employer standard: ''We have a franchisor who wants to work with a franchisee to provide services. Unfortunately, that is not possible because that would violate the current joint employer standard. This ends up hurting everyone in the process. This standard is forcing employers and employees to make decisions that are not best for everyone involved, but what is best to satisfy government.''

John Sims, the owner of Rainbow Station at the Boulders, similarly said this: ''Having the proposed standard reversed allows small businesses like mine to thrive, knowing exactly where everyone stands.''

I am happy to report that the House is taking a bold step forward on defending businesses and workers today. The vague and convoluted joint employer scheme enacted in the Browning-Ferris decision under the Obama administration's National Labor Relations Board has caused employers and employees harm.

Decades before the radical NLRB overturned what worked, businesses and employees knew the rules and thrived. It is time to roll the government back and return to what worked. Mr. Speaker, I urge my colleagues to vote in favor of this legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I am prepared to close, so I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield 1½ minutes to the gentleman from Tennessee (Mr. KUSTOFF).

Mr. KUSTOFF of Tennessee. Mr. Speaker, I rise today in support of the Save Local Business Act, legislation that will protect our small business operations and end harmful and excessive government overreach.

For 30 years, small businesses operated successfully under a joint employer policy that was fair, stable, and crystal clear. Unfortunately, in 2015, the National Labor Relations Board, under the previous administration, decided to insert itself and overcomplicate the important employer-employee relationship. The unelected bureaucrats at the NLRB stifled small businesses when they decided to step in and blur the lines of responsibility.

Sadly, our working families were impacted when the NLRB decided to empower labor union special interests. The last thing our independent businessowners need is more government red tape that will prevent them from reaching their full potential.

The NLRB's expanded joint employer scheme discourages large companies from doing business with our smaller local companies. The effects are incredibly far-reaching. The expanded joint employer rule harms countless industries across the country, particularly small franchisees, construction companies, and service providers.

For example, ServiceMaster, a global company with more than 33,000 employees, has chosen to locate its headquarters in Memphis, Tennessee. A great deal of my constituents work for ServiceMaster Franchise Service Group, and the NLRB rule change has put their job security in jeopardy.

We have all heard concerns from our constituents, and now we can do something to get government off our backs. We must look out for hardworking Americans and roll back these oppressive job-killing rules. I am pleased that the Save Local Business Act will undo this unreasonable regulatory burden, and I thank Congressman BYRNE for his leadership in this effort.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. ALLEN), another distinguished member from the committee.

Mr. ALLEN. Mr. Speaker, I rise today to support Congressman BYRNE's important legislation, the Save Local Business Act.

As a small-business owner myself for over 40 years, I know how difficult it can be to wade through Federal, State, and local red tape. Sometimes it feels like the government is against growing your business. The Obama administration expanded the joint employer standard under the Fair Labor Standards Act, blurring the lines of responsibility for decisions affecting the daily operations of many local businesses.

According to the American Action Forum, the joint employer scheme could have resulted in 1.7 million fewer jobs. Luckily, President Trump is a job creator, so he knows a job-killing regulation when he sees one. Earlier this summer, his administration rescinded this terrible rule.

However, we have to make sure no bureaucrat is empowered to redefine a joint employer standard again. Small-business owners are already facing an uphill battle. We should not be threatening the freedoms of independent businesses, owners, and entrepreneurs, making it even harder for them to achieve the American Dream. That is why I urge all of my colleagues to support this legislation.

Ms. FOXX. Mr. Speaker, I understand my colleague from Virginia is prepared to close. I reserve the balance of my time to close.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, in conclusion, this bill will undermine employees' ability to secure recourse for unfair labor practices and wage theft when there should be a joint employer. It undermines the workers' freedom to negotiate for better wages in return for their work. It inflicts damage to prime contractors who play by the rules and are forced to compete against unscrupulous other employers who save money by failing to pay wages. And it exposes franchisees to liabilities they should

not have to shoulder alone because it allows franchisors to exercise more control over franchisees without incurring any liability.

Mr. Speaker, therefore, I urge my colleagues to oppose the bill, and I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this legislation is a no-brainer. Today, Congress has a chance to stand up for jobs, opportunity, and local businesses in each of our districts. This legislation rolls back an unworkable joint employer policy that is hurting both workers and employers. Contrary to some of the misleading rhetoric we have heard today, nothing in this bill undermines worker protections. In fact, the bill ensures workers know exactly who their employer is under Federal law.

I urge all Members to do what is best for the workers and local job creators in their district by voting in favor of H.R. 3441, the Save Local Business Act.

Mr. Speaker, I yield back the balance of my time.

Mr. SABLAN. Mr. Speaker, I rise today in opposition to H.R. 3441.

The right of workers to collectively bargain under the National Labor Relations Act is essential for them to secure fair wages and working conditions. For workers to be able to bargain effectively they have to have someone across the table to bargain with, the party or parties that control their hours, wages, benefits and work environment. Negotiation with themselves would be a futile exercise.

H.R. 3441 would eviscerate the definition of an employer to the point that not only might the true employer not have to come to the table but it might be possible that no employer would have to come to the table.

Current joint employer standards take into account modern hiring trends, where about three million people work for temporary staffing agencies, working for companies that do not directly pay them, and ensure employee protections.

The recent NLRB General Counsel determination in Freshii—where a restaurant franchisor with over 100 stores was not held to be a joint employer because its control over its franchisees was generally limited to brand standards and food quality and did not exercise control of the terms and conditions of employment of its franchisee's employees—illustrates the pathway available to franchisors. I am concerned that this legislation actually harms franchisees by making them responsible for decisions dictated by their franchisors.

I urge my colleagues to oppose H.R. 3441.

Mrs. COMSTOCK. Mr. Speaker, I rise today in support of the bipartisan H.R. 3441, the Save Local Business Act, and the 1.7 million jobs it would save on enactment.

This common-sense legislation, which I cosponsored, restores the proper relationship which served small business owners for decades—providing stability for employers and employees.

By enacting this legislation, small business owners in Northern Virginia can again exercise control over the operations of their business rather than dealing with additional legal complexity layered on by the National Labor Relations Board.

With all members' support for this legislation to help Main Street, Congress can correct the misdirected regulatory policies of the past which were overly harmful for business operators, restrictive on entrepreneurs, and resulted in increased cost's for consumers.

There are over 2,000 locally owned franchise businesses in my district. After hearing the concerns of many of them at Abrakadoodle headquarters in Sterling this past year, I am proud to stand up for these job creators and support this legislation today.

I will continue to advocate for policies which promote local ownership and control—and permit my constituents to strive for the American dream.

I urge my colleagues to do the same—support the rule and vote in favor of the underlying bill, H.R. 3441.

I commend the distinguished gentleman from Alabama, Mr. BYRNE, and the Committee on Education and the Workforce for their work on this great bill.

The SPEAKER pro tempore (Mr. RUSSELL). All time for debate has expired.

Pursuant to House Resolution 607, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1745

MOTION TO RECOMMIT

Ms. BONAMICI. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. BONAMICI. I am in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. Bonamici moves to recommit the bill, H.R. 3441, to the Committee on Education and the Workforce with instructions to report the bill back to the House forthwith with the following amendments:

Page 3, line 21, strike the closed quotation marks and following period and after such line insert the following:

''(C) Subparagraph (B) shall not apply when a franchisee takes an action at the direction of a franchisor, and such action by the franchisee violates this Act, in which case the franchisor shall be considered a joint employer for purposes of such violation.''.

Page 4, line 7, strike the closed quotation marks and following period and after such line insert the following:

''(3) Paragraph (2) shall not apply when a franchisee takes an action at the direction of a franchisor, and such action by the franchisee violates this Act, in which case the franchisor shall be considered a joint employer for purposes of such violation.''.

The SPEAKER pro tempore. The gentlewoman from Oregon is recognized for 5 minutes in support of her motion.

Ms. BONAMICI. Mr. Speaker, this is the final amendment to the bill. It will not kill the bill or send it back to committee. If adopted, the bill will immediately proceed to final passage, as amended.

Mr. Speaker, the bill we are debating today is another assault on hard-working Americans who are desperately trying to put food on the table for their families, scrape together enough money to pay for child care, and have a roof over their heads.

My colleagues on the other side of the aisle are saying that they need this bill to save local businesses. We all support local businesses in our community. But my colleagues suggest that unless they pass this law, franchisors will become joint employers. Well, if they act like franchisors and control brands and standards, and they don't do things like hire, fire, and supervise the franchisees' employees, they won't be. In other words, if they act like a franchisor and not an employer, they won't be considered a joint employer.

In fact, this bill could actually harm franchisees and take away their independence because it would allow franchisors to indirectly control the labor relations of its franchisees, but be insulated from liability for violations that might arise from that control.

Now, my amendment would require that if a franchisor directs a franchisee to take an unlawful action that would violate labor laws, then the franchisor shall be considered a joint employer for the purpose of the violation.

In other words, if a franchisor acts like an employer, then they should be held accountable for their actions as an employer. Workers must be able to get their hard-earned overtime pay and the wages they are owed. This is common sense.

This motion would protect small businesses, promote the independence of franchisees, and, importantly, cure the defect in the bill that insulates franchisors from liability for exercising control over their franchisees' labor or employment relations.

Mr. Speaker, this legislation currently is an attack on workers' rights.

Mr. Speaker, I urge my colleagues to adopt my amendment, and I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentlewoman from North Carolina is recognized for 5 minutes.

Ms. FOXX. Mr. Speaker, this motion is just another attempt to ignore the real damage caused by the NLRB's expanded and unworkable joint employer standard which continues to hurt local businessowners and their workers.

Let's not get distracted by this motion. Instead, let's focus on the bipartisan solution which is pending: H.R. 3441, the Save Local Business Act, which simply restores a commonsense definition of employer to provide certainty and stability for workers and employers.

Mr. Speaker, I urge my colleagues to vote ''no'' on the motion to recommit and ''yes'' on the Save Local Business Act, and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Ms. BONAMICI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on:

Passage of the bill, if ordered; and

The motion to suspend the rules and pass H.R. 3911.

The vote was taken by electronic device, and there were—yeas 186, nays 235, not voting 11, as follows:

[Roll No. 613]

YEAS—186

Adams
Aguilar
Barragán
Bass
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Boyle, Brendan F.
Brown (MD)
Brownley (CA)
Butterfield
Capuano
Carbajal
Cárdenas
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Conyers
Cooper
Correa
Courtney
Crist
Crowley
Cuellar
Cummings
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Engel
Eshoo
Espaillat
Esty (CT)
Evans
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Gomez
Gonzalez (TX)
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hanabusa
Hastings
Heck
Higgins (NY)
Himes
Hoyer
Huffman
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Jones
Kaptur
Keating
Kelly (IL)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
Krishnamoorthi
Kuster (NH)
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lieu, Ted
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham, M.
Luján, Ben Ray
Lynch
Maloney, Carolyn B.
Maloney, Sean
Matsui
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Moore
Moulton
Murphy (FL)
Nadler
Napolitano
Neal
Nolan
Norcross
O'Halleran
O'Rourke
Pallone
Panetta
Pascrell
Payne
Perlmutter
Peters
Peterson
Pingree
Polis
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Rosen
Ruiz
Ruppersberger
Rush
Ryan (OH)
Sánchez
Sarbanes
Schakowsky
Schiff
Schneider
Schrader
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (WA)
Soto
Speier
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NAYS—235

Abraham
Aderholt
Allen
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barton
Bergman
Biggs
Bilirakis
Bishop (MI)
Bishop (UT)
Blackburn
Blum
Bost
Brady (TX)
Brat
Brooks (AL)
Brooks (IN)
Buchanan
Buck
Bucshon
Budd
Burgess
Byrne
Calvert
Carter (GA)
Carter (TX)
Chabot
Cheney
Coffman
Cole
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Cook
Costa
Costello (PA)
Cramer
Crawford
Culberson
Curbelo (FL)
Davidson
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Donovan
Duffy
Duncan (SC)
Duncan (TN)
Dunn
Emmer
Estes (KS)
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gaetz
Gallagher
Gianforte
Gibbs
Gohmert
Goodlatte
Gosar
Gottheimer
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Griffith
Grothman
Guthrie
Handel
Harper
Harris
Hartzler
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Hill
Holding
Hollingsworth
Huizenga
Hultgren
Hunter
Hurd
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jordan
Joyce (OH)
Katko
Kelly (MS)
Kelly (PA)
King (IA)
King (NY)
Kinzinger
Knight
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Latta
Lewis (MN)
LoBiondo
Long
Loudermilk
Love
Lucas
Luetkemeyer
MacArthur
Marchant
Marino
Marshall
Massie
Mast
McCarthy
McCaul
McClintock
McHenry
McKinley
McMorris Rodgers
McSally
Meadows
Meehan
Messer
Mitchell
Moolenaar
Mooney (WV)
Mullin
Newhouse
Noem
Norman
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Pittenger
Poe (TX)
Poliquin
Posey
Ratcliffe
Reed
Reichert
Renacci
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Russell
Rutherford
Sanford
Scalise
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smucker
Stefanik
Stewart
Stivers
Taylor
Tenney
Thompson (PA)
Thornberry
Tiberi
Tipton
Trott
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NOT VOTING—11

Black
Brady (PA)
Bridenstine
Bustos
Ellison
Garrett
Hudson
Johnson, E. B.
Pelosi
Pocan
Roybal-Allard

□ 1814

Ms. STEFANIK, Messrs. POSEY, THOMAS J. ROONEY of Florida, BRADY of Texas, and Mrs. COMSTOCK changed their vote from ''yea'' to ''nay.''

Messrs. THOMPSON of Mississippi, KENNEDY, and HIGGINS of New York changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Ms. CHENEY). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SCOTT of Virginia. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 242, noes 181, not voting 9, as follows:

[Roll No. 614]

AYES—242

Abraham
Aderholt
Allen
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barton
Bera
Bergman
Biggs
Bilirakis
Bishop (MI)
Bishop (UT)
Blackburn
Blum
Bost
Brady (TX)
Brat
Brooks (AL)
Brooks (IN)
Buchanan
Buck
Bucshon
Budd
Burgess
Byrne
Calvert
Carter (GA)
Carter (TX)
Chabot
Cheney
Coffman
Cole
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Cook
Correa
Costa
Costello (PA)
Cramer
Crawford
Cuellar
Culberson
Curbelo (FL)
Davidson
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Donovan
Duffy
Duncan (SC)
Duncan (TN)
Dunn
Emmer
Estes (KS)
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gaetz
Gallagher
Gianforte
Gibbs
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Griffith
Grothman
Guthrie
Handel
Harper
Harris
Hartzler
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Hill
Holding
Hollingsworth
Huizenga
Hultgren
Hunter
Hurd
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Joyce (OH)
Katko
Kelly (MS)
Kelly (PA)
King (IA)
King (NY)
Kinzinger
Knight
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Latta
Lewis (MN)
LoBiondo
Long
Loudermilk
Love
Lucas
Luetkemeyer
MacArthur
Marchant
Marino
Marshall
Massie
Mast
McCarthy
McCaul
McClintock
McHenry
McKinley
McMorris Rodgers
McSally
Meadows
Meehan
Messer
Mitchell
Moolenaar
Mooney (WV)
Mullin
Murphy (FL)
Newhouse
Noem
Norman
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Peters
Peterson
Pittenger
Poe (TX)
Poliquin
Posey
Ratcliffe
Reed
Reichert
Renacci
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Russell
Rutherford
Sanford
Scalise
Schrader
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (MO)

Smith (NE)
Smith (NJ)
Smith (TX)
Smucker
Stefanik
Stewart
Stivers
Taylor
Tenney
Thompson (PA)
Thornberry
Tiberi
Tipton
Trott
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NOES—181

Adams
Aguilar
Barragán
Bass
Beatty
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Boyle, Brendan F.
Brown (MD)
Brownley (CA)
Bustos
Butterfield
Capuano
Carbajal
Cárdenas
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Conyers
Cooper
Courtney
Crist
Crowley
Cummings
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Engel
Eshoo
Espaillat
Esty (CT)
Evans
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Gomez
Gonzalez (TX)
Gottheimer
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hanabusa
Hastings
Heck
Higgins (NY)
Himes
Hoyer
Huffman
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Kaptur
Keating
Kelly (IL)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
Krishnamoorthi
Kuster (NH)
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lieu, Ted
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham, M.
Luján, Ben Ray
Lynch
Maloney, Carolyn B.
Maloney, Sean
Matsui
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Moore
Moulton
Nadler
Napolitano
Neal
Nolan
Norcross
O'Halleran
O'Rourke
Pallone
Panetta
Pascrell
Payne
Pelosi
Perlmutter
Pingree
Polis
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Rosen
Ruiz
Ruppersberger
Rush
Ryan (OH)
Sánchez
Sarbanes
Schakowsky
Schiff
Schneider
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (WA)
Soto
Speier
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—9

Black
Brady (PA)
Bridenstine
Ellison
Garrett
Hudson
Johnson, E. B.
Pocan
Roybal-Allard

□ 1823

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table

RISK-BASED CREDIT EXAMINATION ACT

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 3911) to amend the Securities Exchange Act of 1934 with respect to risk-based examinations of Nationally Recognized Statistical Rating Organizations on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. HUIZENGA) that the House suspend the rules and pass the bill.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 389, nays 32, not voting 11, as follows:

[Roll No. 615]

YEAS—389

Abraham
Adams
Aderholt
Aguilar
Allen
Amash
Amodei
Arrington
Babin
Bacon
Banks (IN)
Barletta
Barr
Barragán
Barton
Bass
Beatty
Bera
Bergman
Beyer
Biggs
Bilirakis
Bishop (GA)
Bishop (MI)
Bishop (UT)
Blackburn
Blum
Blunt Rochester
Bost
Boyle, Brendan F.
Brady (TX)
Brat
Brooks (AL)
Brooks (IN)
Brown (MD)
Brownley (CA)
Buchanan
Buck
Bucshon
Budd
Burgess
Bustos
Butterfield
Byrne
Calvert
Capuano
Carbajal
Cárdenas
Carter (GA)
Carter (TX)
Cartwright
Castor (FL)
Chabot
Cheney
Clark (MA)
Clay
Cleaver
Clyburn
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Comer
Comstock
Conaway
Connolly
Conyers
Cook
Cooper
Correa
Costa
Costello (PA)
Courtney
Cramer
Crawford
Crist
Crowley
Cuellar
Culberson
Curbelo (FL)
Davidson
Davis (CA)
Davis, Danny
Davis, Rodney
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Dingell
Doggett
Donovan
Doyle, Michael F.
Duffy
Duncan (SC)
Duncan (TN)
Dunn
Emmer
Engel
Eshoo
Estes (KS)
Esty (CT)
Evans
Farenthold
Faso
Ferguson
Fitzpatrick
Fleischmann
Flores
Foster
Foxx
Frankel (FL)
Franks (AZ)
Frelinghuysen
Fudge
Gaetz
Gallagher
Gallego
Garamendi
Gianforte
Gibbs
Gohmert
Gonzalez (TX)
Goodlatte
Gosar
Gottheimer
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Green, Al
Green, Gene
Griffith
Grothman
Guthrie
Hanabusa
Handel
Harper
Harris
Hartzler
Hastings
Heck
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Higgins (NY)
Hill
Himes
Holding
Hollingsworth
Hoyer
Huizenga
Hultgren
Hunter
Hurd
Issa
Jackson Lee
Jeffries
Jenkins (KS)
Jenkins (WV)
Johnson (GA)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jordan
Joyce (OH)
Kaptur
Katko
Keating
Kelly (IL)
Kelly (MS)
Kelly (PA)
Kennedy
Kihuen
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kinzinger
Knight
Krishnamoorthi
Kuster (NH)
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latta
Lawrence
Lawson (FL)
Levin
Lewis (GA)
Lewis (MN)
Lipinski
LoBiondo
Loebsack
Lofgren
Long
Loudermilk
Love
Lowey
Lucas
Luetkemeyer
Lujan Grisham, M.
Luján, Ben Ray
Lynch
MacArthur
Maloney, Carolyn B.
Maloney, Sean
Marchant
Marino
Marshall
Massie
Mast
Matsui
McCarthy
McCaul
McClintock
McCollum
McEachin
McHenry
McKinley
McMorris Rodgers
McNerney
McSally
Meadows
Meehan
Meeks
Meng
Messer
Mitchell
Moolenaar
Mooney (WV)
Moore
Moulton
Mullin
Murphy (FL)
Napolitano
Neal
Newhouse
Noem
Nolan
Norcross
Norman
Nunes
O'Halleran
O'Rourke
Olson
Palazzo
Pallone
Palmer
Panetta
Pascrell
Paulsen
Payne
Pearce
Pelosi
Perlmutter
Perry
Peters
Peterson
Pittenger
Poe (TX)
Poliquin
Posey
Price (NC)
Quigley
Raskin
Ratcliffe
Reed
Reichert
Renacci
Rice (NY)
Rice (SC)
Richmond
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Rosen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Ruiz
Ruppersberger
Rush
Russell
Rutherford
Ryan (OH)
Sánchez
Sanford
Sarbanes
Scalise
Schiff
Schneider
Schrader
Schweikert
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Shea-Porter
Sherman
Shimkus
Shuster
Simpson
Sinema
Sires
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smucker
Soto
Stefanik
Stewart
Stivers
Suozzi
Swalwell (CA)
Takano
Taylor
Tenney
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Tonko
Torres
Trott
Tsongas
Turner
Upton
Valadao
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Walz
Wasserman Schultz
Waters, Maxine
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NAYS—32

Blumenauer
Bonamici
Carson (IN)
Castro (TX)
Chu, Judy
Cicilline
Clarke (NY)
Cummings
DeSaulnier
Deutch
Espaillat
Gabbard
Gomez
Grijalva
Gutiérrez
Huffman
Jayapal
Jones
Khanna
Lee
Lieu, Ted
Lowenthal
McGovern
Nadler
Pingree
Polis
Schakowsky
Smith (WA)
Speier
Titus
Watson Coleman
Welch

NOT VOTING—11

Black
Brady (PA)
Bridenstine
Ellison
Fortenberry
Garrett
Hudson
Johnson, E. B.
Pocan
Roybal-Allard
Scott (VA)

□ 1829

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GARRETT. Madam Speaker, I was unable to be in Washington, DC. Had I been present, I would have voted "nay" on rollcall No. 613, "yea" on rollcall No. 614, and "yea" on rollcall No. 615.