



National Association of Home Builders

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Government Affairs

James W. Tobin III
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September 14, 2015

The Honorable Lamar Alexander
Chairman
Health, Education, Labor, and Pensions Committee
U.S. Senate
428 Dirksen Office Building
Washington, DC 20510

The Honorable John Kline
Chairman
Education and Workforce Committee
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Alexander and Kline:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I write in strong support of the *Protecting Local Business Opportunity Act* (H.R.3459/S.2015), which would restore the traditional definition of joint employment at the National Labor Relations Board (NLRB). We appreciate your leadership on this issue of great importance to many small businesses and working families in America.

The NLRB's contentious decision in *Browning Ferris* expanded the test for finding joint employer status. Under the decision, a company is a joint employer if it has the *potential* right to control or co-determine the essential terms of an employee's employment, including hiring and firing, discipline, supervision, scheduling, seniority and overtime, and assigning work and determining the means and methods of performance. This is a radical departure from the traditional standard of "direct control." *Browning Ferris*' biggest impact on home builders and their contractors will be in three areas: the use of staffing agencies, secondary boycotts, and union organizing.

The determination of joint employment is especially important for home builders. The dominance of small business entities in the residential construction sector illustrates the necessity of the independent contractor business model in the industry. Eighty percent of NAHB's builder members have less than ten employees and build less than ten homes annually. For most builders, there is simply not sufficient internal demand to justify hiring an employee for the numerous specialized tasks required to complete a home project. Consequently, builders rely on an average of twenty-two subcontracting firms to build a home, including framers, roofers, electricians and other types of specialty trades. Without these independent contractors, many family-owned small businesses would simply cease to be viable operations.

NAHB believes the *Browning Ferris* decision will be damaging to the marketplace and housing affordability. The "potential" control standard adopted by the NLRB will lead to centralization of the industry and contribute to higher housing prices.

NAHB strongly supports the *Protecting Local Business Opportunity Act*, which will restore the traditional definition of joint employment and ensure a level playing field for all small businesses. NAHB encourages Congress to consider this legislation without delay. Thank you again for your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Tobin III". The signature is fluid and cursive, with a prominent "J" and "T".

James W. Tobin III