October 3, 2017

The Honorable Bradley Byrne
U.S. House of Representatives
Washington, DC 20515

**Re: Support Save Local Business Act**

Dear Chairman Byrne:

The Associated General Contractors of America (AGC) supports the Save Local Business Act which will clarify what constitutes a joint employer under the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA). A "joint employer" finding is significant. Companies that are joint employers may be held jointly responsible for legal compliance and collective bargaining obligations related to the jointly employed workers, which is a major concern to AGC.

Prior to its *Browning-Ferris Industries* decision, the National Labor Relations Board (NLRB) maintained that separate entities are considered joint employers only if they share direct control over, or co-determine, essential terms and conditions of employment. The new, relaxed standard goes so far as to render one company a joint employer of an unrelated company's workers when the putative joint employer has exercised only indirect control over those workers' terms and conditions of employment through an intermediary, or even if it has the potential to exercise control but has never actually exercised control. Moreover, the vagueness of the totality of circumstances test set forth in the *Browning-Ferris Industries* has left employers with almost no guidance as to when they may be crossing the line. Employers are left unable to predict when they will be found to be joint employers under the NLRA and, therefore, left unable to determine appropriate actions to prevent such a finding.

During the Obama Administration, the U.S. Department of Labor Wage and Hour Administrator issued an administrative interpretation also expanding the concept of "joint employer" under the FLSA. In fact, the interpretation was even broader, and the standard more confusing, than the NLRB's interpretation. While the new Secretary of Labor has withdrawn the interpretation, enactment of the Save Local Business Act is important to prevent a future administration from restoring the overly broad standard.

Joint employer changes can disrupt long-standing standards in labor law and potentially change the way the industry operates. The change could also have a particularly destabilizing impact on well-settled subcontracting practices in the construction industry, where critical issues such as safety and scheduling often dictate that a contractor have some say in how its subcontractors' employees behave and have some oversight in their terms and conditions of employment. Small businesses are the most vulnerable because they are less likely to have the legal advice, staff time, or bargaining power to structure business arrangements that minimize their risk of inadvertently becoming a "joint employer" under the new standard.

AGC looks forward to working with Congress on changing the National Labor Relations Act and the Fair Labor Standards Act to clarify that two or more employers must have "actual, direct, and immediate" control over employees to be considered joint employers.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs