Congress of the United States
Washington, DC 20515

March 23, 2016

The Honorable Tom Cole
Chairman
House Appropriations Committee
Subcommittee on Labor, Health and Human Services, Education and Related Agencies
2358-B Rayburn Building
Washington, D.C. 20515

The Honorable Rosa DeLauro
Ranking Member
House Appropriations Committee
Subcommittee on Labor, Health and Human Services, Education and Related Agencies
1001 Longworth Building
Washington, D.C. 20515

Dear Chairman Cole and Ranking Member DeLauro:

On behalf of every hardworking American, we urge you to consider and support the inclusion of four significant provisions in the FY 2017 Labor, Health and Human Services, Education and Related Agencies Appropriations Bill. Each of the provisions would respectively address disturbing new initiatives by the National Labor Relations Board (NLRB or Board) and Department of Labor (DOL) that overturn decades of well-settled law and together would upset the historic and appropriate balance between employer and employee rights under the National Labor Relations Act (NLRA). They are:

- The NLRB's overreach is perhaps most obvious in the *Browning-Ferris Industries* decision issued in August 2015, in which the Board overturned the traditional **joint employer** standard. Originally, the standard defined joint employers only as those who have "direct" and "immediate" control over the most essential conditions and terms of employment. Under the new standard this control need only be "indirect" or "potential." This exceptional deviation from the well-settled law creates an immense amount of liability for any business that incorporates a franchisor-franchisee model, enters into a contract agreement for services, or otherwise depends upon a non-traditional workplace arrangement for success. This expanded standard discourages larger businesses from contracting work to smaller, locally owned businesses, thus disparaging the relationship between these two entities and holding back economic growth. It is necessary that we restore the long-standing "joint employer" standard that for so long has embodied the key to the historic success of the franchise model and has allowed businesses to thrive by focusing on core competencies.

- Additionally, NLRB's **ambush elections** rule (*Representation-Case Procedures*, 79 *Fed. Reg.* 74307) drastically alters union election procedures and severely restricts an employer's ability to provide employees with the resources required to formulate an educated decision prior to a union election. The rule also dramatically limits due process rights and violates employee privacy by establishing a legal obligation for employers to provide a union with the names, cell phone numbers and email addresses of employees eligible to vote in a union representation election. Restoring the prior long-standing rules would restore a more fair campaign period and encourage a more robust dialogue among

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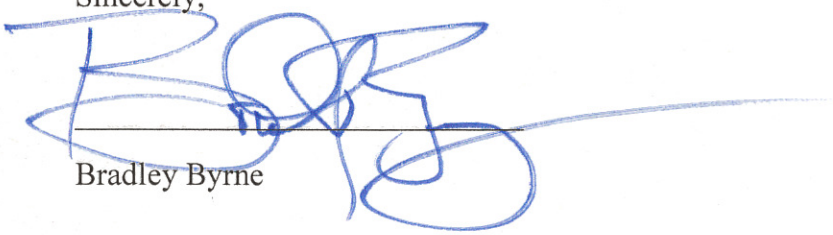
employees regarding the prospect of unionizing so that employees make the most informed decision possible.

- Unintended consequences have continued to cripple the employer-employee relationship through the Board's August 2011 decision in *Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83 (2011)*. The decision fundamentally alters union organizing rules by permitting unions to gerrymander bargaining units. This fragmentation of the workplace often results in the formation of **micro-unions,** which are propped up through a union's newfound capacity to solicit an individual department or work shift to organize. Unions typically target those employees who are most likely to organize regardless of whether they constitute a practical unit, rendering those employees who oppose unionization to be effectively disenfranchised. On a larger scale, the ruling has a profound effect upon each of the estimated six million workplaces covered under the NLRA, as businesses now face the possibility of having to manage multiple bargaining units of similarly situated employees with increased chances of work stoppages, and even the potential for differing pay scales, benefits, work rules and bargaining schedules.

- Finally, the impending implementation of the DOL's controversial **persuader** rulemaking interferes with the ability of employers to seek help from lawyers and consultants in complying with employment law obligations. For four decades, the rules have required reporting when an employer hires a "persuader" to talk with its employees about unionization but has never required reporting of legal advice to employers. However, the proposed rule would undo decades of precedent by virtually eliminating the exemption for advice and would expand the reporting requirement to include any consultation that could impact working conditions. In addition to requiring a tremendous new amount of reporting that is of dubious value, the rule threatens attorney-client privilege and confidences and will likely make it more difficult for employers to find and retain expert advice and assistance.

As such, we urge you to include provisions within the FY 2017 Labor, Health and Human Services, Education Appropriations Bill addressing these issues. We look forward to continuing our work with you to promote a stronger workplace that continues to spur the growth of America's economy. Each of these four provisions are of equal importance in addressing the drastic labor law changes put forth by the NLRB and DOL that have already proven so harmful to employers and employees alike. If we fail to address these four issues within the FY 2017 Appropriations process, economic uncertainty will continue to afflict millions of American employers, workers, and consumers. Thank you for your consideration regarding these critical issues.

Sincerely,



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