

National Hispanic Leadership Agenda

United States Senate
Washington, DC 20510

November 21, 2017

Dear Senator:

On behalf of the National Hispanic Leadership Agenda (NHLA)—the coalition of the nation’s 45 preeminent Latino advocacy organizations—we strongly urge you to oppose the House-passed, and misleadingly named, “Save Local Business Act” (HR 3441) or any similar legislation that should come before you.

HR 3441 would change the definitions of employment relationships under the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA). The FLSA requires most employers to keep payroll records, pay a minimum wage, pay overtime after 40 hours per week, and comply with rules on child labor. The NLRA creates a right of most workers to join or organize a labor union free from retaliation and a structure for collective bargaining.

Currently, the definitions of employment relationships in the FLSA and the NLRA, though different, allow courts and the federal agencies to consider the facts of each case and determine under certain circumstances that two businesses which share responsibility for employment of a group of workers should be considered to be “joint employers” of those workers and jointly responsible for complying with the law.

HR 3441 would make it virtually impossible for a court or federal enforcement agency to hold that two businesses are both the employer—or “joint employers”—of a group of workers even when the two businesses share responsibilities for their hiring and employment. Just one entity would be solely responsible for compliance with the law and liable to workers for backpay and other relief when their rights are violated. Ordinarily, it would mean that a business that utilizes a labor contractor or other labor intermediary could escape responsibility and foist all liability on the labor contractor. The bill contravenes decades of lessons about reducing child labor, sweatshops and other abuses.

The prohibition against joint employment liability would fall especially harshly on workers when, as happens all too frequently, the labor contractor lacks sufficient assets to pay a court judgment. In such cases, the workers are denied a remedy and the business is free to continue its use of abusive labor contractors. Meanwhile businesses, whether using labor contractors or not, that ensure compliance with employment laws suffer a competitive disadvantage because their costs are higher.

MEMBER ORGANIZATIONS

Alianza Americas
American G.I. Forum
ASPIRA Association
Avance Inc.
Casa de Esperanza: National Latin@ Network
Congressional Hispanic Caucus Institute
Farmworker Justice
Green Latinos
Hispanic Association of Colleges & Universities
Hispanic Federation
Hispanic National Bar Association
Inter-University Program for Latino Research
Labor Council for Latin American Advancement
LatinoJustice PRLDEF
League of United Latin American Citizens
MANA, A National Latina Organization
Mexican American Legal Defense and Educational Fund
Mi Familia Vota
National Association of Latino Arts and Cultures
National Association of Hispanic Federal Executives
National Association of Hispanic Publications
National Day Laborer Organizing Network
NALEO Educational Fund
National Association of Latino Independent Producers
National Conference of Puerto Rican Women, Inc.
National Hispanic Caucus of State Legislators
National Hispanic Council on Aging
National Hispanic Environmental Council
National Hispanic Foundation for the Arts
National Hispanic Media Coalition
National Hispanic Medical Association
National Institute for Latino Policy
National Latina/o Psychological Association
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SER Jobs for Progress National
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UnidosUS
United States Hispanic Chamber of Commerce
United States Hispanic Leadership Institute
United States-Mexico Chamber of Commerce
U.S.- Mexico Foundation
Voto Latino

The quadrennial Public Policy Agenda of the NHLA, which identifies key issues impacting the nation's Latino community and provides recommendations to policymakers, states: "Latinos are overrepresented in low-wage occupations, including in building services, food establishments, agriculture, and home health care, among other occupations, where fissured workplaces are an issue. A fissured workplace occurs when the relationship between workers and employers is increasingly blurred as layers of subcontracting of low-wage jobs grow. The convoluted nature of these arrangements makes it difficult to ensure compliance with regulations meant to protect workers." The recommendations include addressing the issue of fissured workplaces through "enforcement of the joint employer concept," which HR 3441 would undermine.

Joint employer liability encourages businesses to ensure compliance with labor laws on behalf of workers who sustain their businesses and to utilize labor contractors that comply with the law and possess resources to meet their financial and legal obligations. Businesses are permitted, under current law, to use labor contractors and other intermediaries and to require such contractors to accept responsibility and liability under employment laws. This bill would encourage businesses to engage labor contractors that deprive workers of their rights and thereby gain an unfair competitive advantage against law-abiding employers.

NHLA strongly opposes HR 3441 as it would undermine basic labor protections for millions of workers while deteriorating the competitiveness of businesses that choose not to evade labor protections in the manner that this bill would permit. We urge you to oppose HR 3441 and any similar legislation.

If you have any questions regarding NHLA's position on HR 3441, please do not hesitate to contact NHLA through Bruce Goldstein at bgoldstein@farmworkerjustice.org.

Sincerely,



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Chair, NHLA



Bruce Goldstein
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Eric Rodriguez
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