JOSEPH P. KENNEDY III
4TH DISTRICT, MASSACHUSETTS

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON HEALTH
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SUBCOMMITTEE ON DIGITAL COMMERCE AND CONSUMER PROTECTION

Congress of the United States
House of Representatives
Washington, DC 20515-2104

434 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5931

DISTRICT OFFICES:
29 CRAFTS STREET
SUITE 375
NEWTON, MA 02458
(617) 332-3333

8 NORTH MAIN STREET
SUITE 200
ATTLEBORO, MA 02703
(508) 431-1110

October 25, 2018

The Honorable John F. Ring
Chairman
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570-0001

Dear Chairman Ring,

I write to express strong opposition to the proposed rule "The Standard for Determining Joint-Employer Status." This proposed rule would significantly narrow the circumstances under which a putative employer may be considered a joint employer, enabling businesses to evade employment liability and undermine worker rights. Furthermore, I have serious concerns with the process the National Labor Relations Board has undertaken to redefine the joint employer standard and urge you to withdraw your proposed rule.

If adopted, this rule would reverse the joint employer standard created in 2015 in *Browning-Ferris Industries,* which considered "…whether the alleged joint employers share the ability to control or co-determine essential terms and conditions of employment" such as rate of pay and work schedule. The decision in *Browning* reflects changes in today's economy. The dramatic increase of subcontracting and labor intermediaries, such as staffing agencies, has allowed companies to evade critical labor and employment laws. This in turn has resulted in diminished access to collective bargaining and degraded working conditions for employees.

By limiting joint employers to include only companies that both possess and exercise "substantial, direct and immediate control" over the essential terms and conditions of employment, this rule would allow large franchisors to evade legal responsibility for labor and employment violations. Small businesses would face the risk of being held solely responsible for labor law compliance and collective bargaining. Furthermore, companies would have incentives to outsource their employment process to agencies that provide independent contractors, who are excluded from the benefits and protections of the National Labor Relations Act, in order to circumvent labor and employment laws.

In addition, I have significant concerns with the process through which this rule is being promulgated. On December 14, 2017, the Board voted in *Hy-Brand Industrial Contractors Ltd. and Brandt Construction Co.* to similarly narrow the scope of joint-employer liability. However, as you know, in February 2018, the Board was forced to vacate this ruling after the Inspector General concluded that the participation of Board member Mr. William Emanuel constituted a conflict of interest in violation of ethical standards. Mr. Emanuel nevertheless remains involved

in this rulemaking process. Given these events, it is apparent that the Board has initiated this rulemaking in an attempt to achieve a predetermined outcome it previously attempted but failed to achieve, and I have grave concerns it will fail to provide public comments with the full and fair consideration such a process demands.

In closing, I strongly oppose this proposed rule. Its adoption would be detrimental to workers and would allow corporations to shirk liability from employment and labor laws. Furthermore, I have concerns with the process through which this rule is being promulgated, and I urge you to withdraw it.

Sincerely,

Joseph P. Kennedy, III
Member of Congress