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June 15, 2016

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WLF Calls on Appeals Court to Overturn NLRB Joint Employer Rule that Tramples Decades of Precedent

(Browning-Ferris Industries of California, Inc. v. NLRB)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) late yesterday called on the U.S. Court of Appeals for the District of Columbia Circuit to overturn the National Labor Relations Board’s (NLRB) new employment standard under which regulated entities can be deemed “joint employers” of another company’s employees—and then held fully liable for duties owed to those employees (*e.g.*, collective bargaining). In a brief filed in *Browning-Ferris Industries of California, Inc. v. NLRB*, WLF argues that Congress has not authorized NLRB to issue the new standard, which threatens to impose new, unanticipated liability on a broad range of entities.

The case involves a recycling facility owned and operated by Browning-Ferris. Like many companies, Browning-Ferris has hired a separate firm to perform a portion of the work at its facility. The separate company (Leadpoint) performs all employer-related functions for its employees (*e.g.*, hiring, firing, paying, and supervising). NLRB nonetheless ruled that Browning-Ferris jointly employs Leadpoint’s employees because it has the power to *indirectly* control their work (and occasionally exercises that indirect control) by virtue of its authority to terminate Leadpoint’s contract. NLRB’s ruling overturned a 32-year-old standard, under which companies are not joint employers unless they exercise direct and immediate control over employees.

WLF’s brief argues that the new standard violates well-established definitions of “employer” and threatens to impose new liabilities and destroy a wide variety of successful business models, such as franchisor/franchisee, contractor/subcontractor, and parent/subsidiary corporation. WLF warns that the new standard is so vague that it deprives the regulated community of the ability to accurately predict the circumstances under which their activities will subject them to liability.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “NLRB’s new ‘joint employer’ standard overturns decades of established precedent and ignores Congress’s command that federal bureaucrats should not attempt to expand the commonly understood definitions of ‘employer’ and ‘employee.’ The standard hits hardest on small businesses, because it will discourage larger firms from contracting with start-up entrepreneurs who hope to grow their companies by offering low-cost, niche services that drive down costs.”

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive government regulation.

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