Press Release

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In a Victory for WLF, Appeals Court Vacates NLRB Decision that Vastly Expanded Employer Liability

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

"NLRB's 2015 'joint employer' standard overturned decades of established precedent and ignored Congress's command that federal bureaucrats should not expand the commonly understood definitions of 'employer' and employee.' The courts and NLRB itself have rightly abandoned that standard."
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the District of Columbia Circuit last week vacated a National Labor Relations Board (NLRB) decision that was based on an employment standard under which regulated entities could be deemed "joint employers" of another company's employees—and then held fully liable for any obligations owed to those employees. The court's order was a victory for WLF, which argued in an *amicus* brief that NLRB's 2015 joint-employer standard was unauthorized by Congress and threatened to impose new, unanticipated liability on a broad range of entities.

Under the joint-employer standard adhered to by NLRB before 2015, a company was not deemed the "employer" of workers nominally employed by another company unless it exercised "direct and immediate control" over those workers. But in 2015, NLRB vastly expanded that definition to encompass companies that *reserved* the right to control workers' activities—even if they did not actually exercise that control. NLRB then applied its new standard to a recycling facility owned and operated by Browning-Ferris Industries (BFI). NLRB ruled that BFI was a "joint employer" of the employees of Leadpoint (a subcontractor operating at the BFI facility) because BFI had the power to *indirectly* control the employees' work—even though Leadpoint handled all the normal employer-related functions for its employees (*e.g.*, hiring and firing).

On December 14, 2017, the newly reconstituted NLRB voted 3-2 (in *Hy-Brand Industrial Contractors*) to overturn its 2015 joint-employer standard and to return the law to the "direct and immediate control" standard in place before 2015. The appeals court issued its ruling in response to the NLRB's *Hy-Brand* vote; it vacated the NLRB's ruling against BFI and remanded the case to the Board to consider whether BFI could be deemed a joint employer under the "direct and immediate control" standard.

WLF's D.C. Circuit brief argued that the vague 2015 standard violated well-established definitions of "employer" and threatened to impose new liabilities in a wide variety of contexts, such as franchisor/franchisee, contractor/subcontractor, and parent/subsidiary corporations.

Celebrating its 40th year as America's premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

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