TESTIMONY TO THE COMMERCE COMMITTEE January 21, 2015

Thank you for allowing us to speak today.

I'm Mark Groleau of Groleau Construction Co. A general contracting firm from the Central Vermont area who has been providing building and remodeling services for 55 years. Over all of these years we have provided jobs to many employees. We have always had employees. We always make every attempt to comply with all laws.

Over 30 years ago laws were enacted recognizing the independent contractor. Section 530 of the Revenue Act of 1978 brought about the IRS reporting requirements with form 1099. Sole proprietors, partners, and officers of corporations were allowed to opt. out of the Workers Compensation in this State by excluding themselves from coverage with form 29. These laws that are still current, provided the flexibility necessary for the construction industry to be able to shrink and grow with varying economic climates and seasonal swings. I know it has allowed our company to stay in business for so many years through so many economic cycles. We have always used and followed the IRS common law test as our guideline for compliance with the law.

Now what has changed is not the current laws, but how the laws are being interpreted. It was quite a shocker of a surprise to find out a few years ago after a Workers Compensation audit that I was now liable for like 5,000 in Workers Compensation Premiums on my independent subcontractors who did not have Workers Comp. One has to question, if they are not required to have Workers Compensation, then why am I liable to cover them. This has not been the case for more than 30 years. And now just the fact that independent subcontractors were hired who did not have Workers Comp., along comes the Dept. of Labor UI audit, in which the Dept. seems to decide that any subcontractor without Workers Comp. are automatically assumed to be misclassified employees. The audit is very intrusive with a presumption of guilt. It is very time consuming and costly as we have to prove our honest attempt to be in compliance with the law. How fair is it to be retroactively charged UI tax on these subcontractors when we were never liable for them in the past and that they cannot draw unemployment. Whereas our mentality on common labor meant that subcontractors cannot work alongside your own employees on the same work and be independent contractors. The DOL has admitted they follow a more stringent set of conditions in their A, B , C test. Whereas the B test is too broad for accurate interpretation. "Work that is the normal operation of the business" has allowed the Dept. to determine that if you build homes, than everyone involved in the home is your employee. This is misclassification.

As a result we have had to stop hiring sole contractors as many other have as well in fear of the retroactive cost. This will have an impact on the economy as many of the sole contractors who relied on a good portion of their sales coming from larger contractors, will no longer have this work. It will be a hardship on the them, their families, and the many places they spend their money. From our perspective, it is bound to raise the cost of housing. We will either be hiring larger subcontractors with employees and Workers Comp. who charge more, or if we continue to use the sole contractor, we will have to add the cost of paying their Workers Comp. and UI, having the same effect on our selling prices.

The solution we seek, in line with the National Association of Home Builders Resolution, is Safe Harbor Legislation for the building construction industry. Wheras it is recognized that building construction is characterized by extensive subcontracting of the actual construction work. That a wide variety of materials are assembled or fabricated by a host of different trades, often with specialized tools and training. That building construction is basically the coordination of work by many different subcontractors in which the GC or Builder is the project manager. That current law allows the flexibility necessary for the industry to function in changing economic times and recognizes the unique characteristics of the building construction industry. And that any rigid application of static rules would result in the improper classification of legitimate independent subcontractors as employees.

Legislation that as long as current law does not require sole contractors to have Workers Compensation or pay into the Unemployment fund, than we as the hiring entities be held harmless by not having to pay on their behalf, and that the hiring entities own insurance will not be held liable in a claim where the sole independent contractor has chosen not to be insured.

Mark Groleau

Groleau Construction Co., Inc.