Testimony of Jocelyn B. Jones, Segal Roitman, LLP
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re: H. 867

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Thank you kindly, members of the committee for the honor of being able to address you today on this extremely important topic.

(Please see BIO for intro)

I served as a member of the Massachusetts Joint Task Force on the Underground Economy and Employee Misclassification (now called the Council on the Underground Economy)

Worked with states across the country on the law, establishing task forces, providing guidance on employee misclassification for years.

This issue of employee misclassification is not just an issue in Vermont, and my home state of Massachusetts, it's a national issue, indeed, an international issue.

Striving to strike the right balance when it comes to defining what it means to be an employee is an art, not a science. But, Vermont's employee misclassification law, like Massachusetts', goes a long way toward ensuring the proper classification for employees.

Our ABC test - the employee status test - is virtually identical to yours in Vermont.

Doing away with the ABC employee status test as House bill 867 does, is throwing the baby out with the bathwater.

In Massachusetts, we have been defending our misclassification law since 2007, nearly 10 years.

Each year, one industry or another makes a huge push, claiming the sky will fall if the law does not change.

Well, thanks to the sound judgment of our state legislature, the law has not changed, and the sky has not fallen. I am not saying there are not unintended consequences –

And indeed the state's economy has continued to flourish. The threats of industries leaving because of our so called "outlier law" never came to pass – because people came to see that merely asks businesses who hire people to work for them and perform the work of the business to follow the laws that already exist to protect those people – otherwise known as employees.

The voices urging for what amounts to a gutting of the law often suggest adding all sorts of meaningless requirements to create a smoke in the mirrors effect. They want to gut the employee definition section but build up stringent "registration" requirements, essentially making it look like the law is tough --- look at all these new requirements, they will say. But, don't let them fool you. The six-part test of what it means to be an independent contractor contains a lot of bark and no bite.

This is simply an effort to paper over the issue.

Employee misclassification laws are good for workers, good for law abiding business and importantly, good for the state's economy.

In Massachusetts, through our task force, between 2008 and 2014, we collected and returned to the state and workers nearly $80 million dollars in back wages, back taxes and unpaid workers comp and unemployment premiums and penalties that went straight into the state treasury.

Think of what Vermont could do with an extra $80 million dollars in its economy. That's money that can hire firefighters, police and teachers, build roads and bridges, and schools, and plow highways, and money that can help fight the opioid epidemic.

The state and other law-abiding businesses should not be subsidizing businesses that do not want to pay their fair share and misclassify their employees to avoid the costs of providing the protections and benefits that our society has determined should accompany employment.

A few years ago, I spoke at a labor event in the Berkshires, and sat with your Senator Bernie Sanders. I spoke about the work of the Massachusetts Attorney General's office and its efforts create a level playing field for law-abiding businesses. And about the constant forces

attempting to rewrite the rules of the game in the name of less business regulation. And the employee misclassification law is always on their radar.

But, interestingly, over the years, many business groups and contractors have come to see the benefits of a strong misclassification law. They also see the law works and that it's not going away – so they simply comply with it.

In fact, the Associated Builders and Contractors of Massachusetts, an organization comprised of so called open shop contractors – or non-union contractors – became one of the strongest advocates for our misclassification law.

Why?

Because their honest and law abiding members were tired of working hard, sharpening their pencils only to be repeatedly underbid by fly by night companies full of so called independent contractors.

SO this is not a union v. nonunion issue. That has nothing to do with this issue despite attempts by

business advocates to paint it as such. This is about fairness and justice and the economy.

Years ago in Massachusetts, it was not uncommon to find companies full of so called independent contractors --- whose only employees were office staff.

So those companies did not report any of the workers performing services in the usual course of the companies business, which was building, and avoided paying taxes, workers compensation, unemployment and other benefits. Those companies ran roughshod over their competition.

That is the proverbial underground economy. And I want to be clear on this important point:

Whether the employees are labeled independent contractors or simply nonclassified and paid under the table, the effects are virtually the same.

And the harmful affect on competition is immeasurable.

Those days are gone in Massachusetts because of our law. And because the spotlight was shone

upon the real issue. And year after year, I heard from business owners and contractors saying how this law made an enormous difference in their respective industries.

It is simply unfair to allow businesses to essentially chose if they are going to follow the laws that this body and the United States Congress has set forth by simply allowing employers to chose how they want to lable their employees.

But it is not just fair competition that suffers.

Working families suffer because when a loved one loses a job, and had been misclassified as an independent contractor, there is no unemployment, no safety net.

And when someone gets hurt on the job, and is without workers compensation because her employer has misclassified her and she is not covered by the employers workers comp policy even though all she does day in and out is to work for the company, that worker is left without wages and without a job.

And allowing companies to shift the burden of the costs of doing business, such as paying for workers comp, to the shoulders of workers performing the work of the company is simply unjust to both the workers and the company's competition.

And while this is not a union v. nonunion issue, it should be noted that individuals who are misclassified as independent contractors cannot chose to organize and be represented by a union.

The list goes on, but suffice to say, what might appear to be a small change --- a simple definitional change --- is a change that can undue the important safeguards that come with current law, that ensures proper classification of workers.

When the tide is turning across the country, with more and more states adopting stricter laws to ensure proper classification of workers, and the federal IRS working closely with the US Department of Labor to fight misclassification, it's not the right time to consider gutting your law.

I strongly urge the legislature not to adopt the definitional changes proposed in H 867 and to

continue on to both enforce the law and to measure the effects of misclassification on your state in a study that as I understand was required under the law but never undertaken.

I'm happy to take any questions. I'm also happy to come meet with the Committee to talk through these issues in depth at any point if you should ever desire.