

“Expanding Joint Employer Status: What Does it Mean for Workers and Job Creators?”

House Committee on Education and the Workforce Health, Education, Labor & Pensions Subcommittee

Testimony of Jagruti Panwala Hotel Owner and Operator

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I. Introduction

Chairman Roe, Ranking Member Tierney, and distinguished members of the Subcommittee, thank you for the opportunity to testify before you today. It is an honor to appear before Congress and share my story. This is especially true as you consider policy initiatives that will impact small business owners across the country.

My name is Jagruti Panwala. My family and I are small business owners from Pennsylvania. Specifically, we are hoteliers – independent owners and operators of five hotels in the northeastern United States. I am also a first generation American, an entrepreneur and a franchisee. I come before you today to discuss a significant threat to my livelihood and the livelihood of those I employ, many of whom I consider to be family.

I was born in Gujarat, India. My family and I immigrated to the United States in 1988 in search of opportunities for education and entrepreneurship. Very shortly after graduating from college, I decided to take the biggest risk of my life by purchasing a hotel and going into business for myself. When I was only 22 years old, my husband and I bought the Economy Inn, an independent motel with 35 operational rooms, in Levittown, Pennsylvania. We borrowed money from family and friends to make the down payment and secured a loan to get started.

In addition to working at the Inn for more than 100 hours per week, we also lived in room 201. Not only was I an owner and operator, but I was also a desk clerk, housekeeper, plumber, security guard, handyman, landscaper and janitor. The building was old and dilapidated. It posed a number of challenges, including leaky pipes, a crumbling foundation, broken furniture, rust, mildew and a general lack of customers. For two years, we repaired, replaced, renovated and marketed our motel into respectability. Even after all of our efforts to rebuild our business and our home, it was still difficult to make ends meet – particularly in that market. In order to succeed as hoteliers, we realized it was not enough to simply run the operations efficiently, but we needed to attract more customers. We found that we could do so by affiliating with a nationally recognized brand.

After Choice Hotels accepted our franchise application, we converted the Economy Inn into a Comfort Inn hotel. This was our first experience with franchising – or “raising a flag” of a national brand, as it is known in the industry. We thoroughly reviewed the franchise agreement and understood our obligations as franchisees. We also paid particular attention to what we could expect from our franchisor. While we were obligated to pay a onetime franchising fee and

subsequent royalties for licensing the brand name, the additional customers and revenues that came with associating with the brand were much more consistent than at our independent motel.

Ultimately, franchising appealed to us because we still controlled our own business. We identified the property, secured the financing, undertook all of the risk, determined how many staff people were necessary, established wages, hours, schedules, promotion and bonus criteria, eligibility for overtime, hiring, firing, and all of the daily operations and functions necessary to operate a successful business.

Today, we own and operate four franchised hotels in Pennsylvania and we are in the process of building a fifth, a Best Western in New York. Among these properties, we employ over 200 people and maintain a very closely-knit relationship with them.

In my career, I have worked closely with four different franchisors: Choice Hotels International, Wyndham Hotels, InterContinental Hotels Group and Best Western. While each of these companies maintains unique requirements to ensure consistent brand quality, I remain in control of my businesses as an owner-operator. Consequently, I am particularly concerned with the recent decision of the NLRB's General Counsel who has indicated a preference of expanding so-called "joint employer" status to include both franchisees *and* franchisors.

In addition to running our family business, I also serve as a volunteer-board member of the Asian American Hotel Owners Association (AAHOA). AAHOA members own over 40% of all hotels in the United States and employ over 600,000 workers, accounting for nearly \$10 billion in payroll annually. Approximately 80% of the more than 20,000 properties AAHOA members own are franchised businesses. My story is nearly identical to those of the nearly 13,000 small business-owner-members of the association.

I am here today to explain my perspectives as a franchisee, and describe how an expanded definition of joint employer status will have devastating effects on my businesses, my employees and the lodging industry.

II. The Franchise Model in the Lodging Industry

The franchising model as it pertains to the lodging industry is reasonably straightforward. As an hotelier, it is incumbent upon me to identify the market, apply to become a franchisee, secure the financing, acquire insurance, determine zoning constraints, purchase the land, establish contracts with construction companies and contractors, schedule health and safety inspections, set prices, establish staffing needs, know and abide by laws and regulations, undertake all of the financial risk, and run the daily operations of my business.

Conversely, in my experience, hotel franchisors' responsibilities include granting franchise approvals, providing guidelines for construction, layout, design, and décor; conducting national marketing campaigns, developing training for management, and generally offering guidance to ensure the quality of their brand remains consistent from one hotel to the next.

Additionally, franchisors provide certain services like a point of sale system and reservation portals that allow me to maximize efficiencies in running my business. They also charge a onetime fee of \$25,000 to \$50,000 for use of their flag and monthly royalties of 10-15% of the gross revenues of the business. Net profits based on the success of the business remain with me, as the hotel owner.

In fact, these responsibilities of the franchisor and the franchisee are clearly defined in every licensing agreement and I expect these terms to be set well in advance.

With respect to management of the daily operations of my hotels and specifically establishing the employment agreements with our staff, as the hotelier, I remain in control. In my role as the hotel operator, I determine the parameters of the working environment. I first assess the overall staffing needs for each property and then make hiring decisions accordingly. My managers and I accept applications and evaluate potential employees. I also set wages, benefits packages, weekly schedules, hours, break times, employee evaluation criteria, metrics for promotions and raises, disciplinary procedures, and if necessary, termination.

Moreover, after signing the initial license agreement with the franchisor, my interaction with them is only occasional. My manager or I will contact them once or twice per month. Similarly, they may reach out to me just as infrequently. The topics of discussion tend to focus on the state of my properties, updates on any repairs or renovations, and any new laws, regulations or procedures that may have arisen that I may need to take note of. These conversations do not include consultations about the workforce generally, nor specific employees. Again, staffing decisions remain mine and mine alone.

As I hope you can see, I am in no way an agent of the franchisor, and I am certainly not an employee of the franchisor. I am an independent small business owner, who makes decisions about my business and my staff autonomously. Affiliation with a franchisor can help generate revenues but, ultimately, success or failure and profitability of the hotel is based upon my decision-making – as it is with all small business entrepreneurs.

III. Impact of Expanding Joint Employer Status

Mr. Chairman, it is for these reasons I am extremely alarmed by the radical decision of the NLRB's General Counsel seeking to confer joint employer status onto franchisors. As I understand it, the franchise model has existed for nearly 100 years and franchisees have long been considered the sole employer because we control the working conditions of our employees. This relationship remains the same today.

At its very core, any decision imputing liability for franchisees' employment decisions onto the franchisor, may cause franchisors to impose control over the daily operations of each business in an effort to mitigate against any claims. Essentially, I would no longer be in business for myself.

Instead of simply acting as a licensor, collecting fees, and providing guidance from time to time, the franchisor would likely feel the need to become a partner who would inherently have a lesser understanding of operating conditions than I do, and try to have a disproportionate influence on business and staffing decisions. Franchisors would likely take an active role in basic employee

management determinations like hiring, firing, wages, hours, benefits, and schedules. Worse however, is that the franchisor would likely also dictate policies for promotions, raises and advancement within the company. Currently, I pay nearly all of my over 200 employees well above minimum wage and continually reinvest capital into my businesses and my staff. I am deeply concerned that those decisions will no longer be exclusively mine, because franchisors may view the value of expenditures differently than I do and my staff may suffer as a result. Stated plainly, the interests of myself and the franchisor will not always be the same with respect to my employees and my business.

I can easily foresee circumstances where I may disagree with the franchisor on what employment decisions are best for the business and I could find myself in a position where I would have to defer to the franchisor's judgment. It is important to remember, most franchisors are public companies with much different goals and motives than I have as a small business owner. The franchisor and franchisee relationship is certainly not without its frictions as a result of some conflicting interests, and further oversight would only add strain to the relationship.

Moreover, with a more hands-on approach to the franchise relationship, franchisors may require an added presence at my properties. They may insist on reviewing employment matters in advance and try to direct the decision making process. If this were to happen, I would essentially become an **employee** of the parent corporation and no longer an entrepreneur. I would lose the equity I have built in my business overnight based on the decision of an unelected bureaucrat in Washington. Similarly, with added presence and control, franchisors may demand additional licensing fees and royalties, in order to monitor franchisees. Worse, they may even want to share in my bottom line profits, which may prevent me from paying my employees more or investing in new properties. Ultimately, under the current hotel franchise model and under the terms of the franchise agreements I have considered, I am confident that neither the franchisor nor I want their increased involvement in staffing decisions and day-to-day operations.

To be completely honest, if these were the conditions of the franchising model before I became an hotelier, I would have never entered into this business. I am an entrepreneur and a small business owner and because of my ambition, work ethic and determination, I have been able to succeed. I measure that success in my ability to expand my business, create good jobs and the opportunity to reinvest in my community.

Expanding joint employer status would collapse the franchising model and extinguish aspirations of business ownership. I also strongly believe that as a result, jobs would be lost, or never created, because entrepreneurs do not want to simply manage some else's hotel.

IV. Conclusion

Mr. Chairman, Ranking Member Tierney and Members of the Committee, I sincerely thank you for the opportunity to share my story with you. I have worked too hard and overcome too many obstacles as an entrepreneur and as a first generation American, to sit idly by while bureaucrats and lawyers attempt to undermine my success and status as an employer – and a business owner.

As I mentioned, I serve on the board of the Asian American Hotel Owners Association, the largest hotel owners group in the world. Each of our members shares the same narrative that I have shared with you today and the negative consequences that would impact my hotels would affect theirs too – as well as countless franchisees across the country in nearly every industry.

In preparation for this hearing, I read portions of the NLRB General Counsel’s brief in the *Browning-Ferris* decision. It essentially claimed that franchisors were the true employers who inserted “intermediaries” between themselves and employees in order to avoid collective bargaining over working conditions. Mr. Chairman, I am no intermediary. I am a business owner and a job creator. This sort of uninformed rhetoric is quite frankly, offensive, because it diminishes my accomplishments as a businesswoman.

I strongly urge you to consider the tremendously adverse impacts on franchisees and workers when deliberating policy proposals associated with the definition of a “joint employer.”

Thank you.