MATT HALLER

PRESIDENT AND CEO
INTERNATIONAL FRANCHISE ASSOCIATION
WASHINGTON, DC

TESTIMONY BEFORE THE U.S. HOUSE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

HEARING ON "PROTECTING WORKERS AND SMALL BUSINESSES FROM BIDEN'S ATTACK ON WORKER FREE CHOICE AND ECONOMIC GROWTH"

DECEMBER 13, 2023

Chairman Good, Ranking Member DeSaulnier, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Matt Haller, and I am the President and CEO of the International Franchise Association (IFA).

IFA is the world's oldest and largest organization representing franchising worldwide. IFA represents all aspects of the franchise business model, with more than 1,200 franchise brands, more than 10,000 franchise business owners, and 600 industry suppliers who support the franchise sector. For over 60 years, IFA has worked through its government relations, public policy, media relations and educational programs to advocate for the protection, promotion and enhancement of franchising. IFA members include franchise companies in over 300 different industries, individual franchisees, and companies that support franchising in marketing, technology solutions, development, operations, and more.

Relevant to this hearing, IFA leads the Coalition to Save Local Businesses, which is comprised of locally owned, independent businesses, associations, and organizations seeking a clear and fair "joint employer" standard that allows our economy to flourish. To that end, the coalition supports the Save Local Business Act, and opposes the National Labor Relations Board's (NLRB) recently announced joint employer rule that threatens local businesses and has received diverse, bipartisan opposition.

This testimony has four sections. First, it will describe the distinctiveness of the franchise business model. Second, it will discuss the current state of the U.S. economy and how franchisors provide support to ensure their franchisees' success and overcome post-COVID challenges. Third, it will describe the current state of the franchise relationship between franchisors and franchisees. Finally, it will address the unnecessary costs and threats posed to franchising by the NLRB's final joint employer rule. I will demonstrate these consequences from both the macroeconomic level through IFA and other franchise research, as well as through specific examples cited by franchisors and franchisees which demonstrate the real-world impact of this rule.

1. The Unique Attributes of the Franchise Business Model

Franchising is arguably the most important business growth strategy in American history. Today there are approximately 790,000 franchise establishments that support nearly 8.4 million direct jobs, $825.4 billion of economic output for the U.S. economy, and almost 3 percent of the Gross Domestic Product – the same size as the entire defense industry. Franchising itself is not an industry, but rather a business model used by brands, or franchisors, in hundreds of industries to accelerate growth to new markets with the use of capital and local market knowledge of business owners, or franchisees, in those communities.

While opponents of the franchise model have argued franchising is simply a way to shirk responsibility for employment matters, these arguments are simply not consistent with reality or a basic understanding of the economics of the franchise business model. In fact, franchising creates value at all four levels of the franchise relationship: from the brands to the franchise owners to the employees and, ultimately, to the consuming public.

Benjamin Franklin launched the first "franchises" and over the centuries, this system has served as a core American model of opportunity and entrepreneurism. In 1731, Franklin entered a partnership with Thomas Whitemarsh, who franchised his printing business, *The Pennsylvania Gazette*. Later, Whitemarsh would introduce the first "franchised" newspaper of South Carolina, the *South Carolina Gazette*.

At its core, franchising is the relationship that the franchisor has with its franchisees—how the

franchisor supports its franchisees, how the franchisee meets its obligations to deliver the products and services to the system's brand standards, and the brand's value. In franchising, we say, "You go into business for yourself, but not by yourself."

Franchising is often confused with "big business" when it is in fact the exact opposite. According to market research and advisory firm FRANdata, most franchise owners (81.6% or 191,685 franchisees) own and operate one location. FRANdata reports that franchisees pay an average of a 6 percent royalty to a brand for the right to operate a business under its trademark and sell the brand's products or services. This means franchisees retain an average of 94 percent of their business revenue. Indeed, franchising requires a symbiotic relationship between two business entities (franchisors and franchisees) whose interests are inextricably linked, yet different in their roles and their responsibilities to maximize success.

Furthermore, most franchisors are also very small enterprises, as the chart below shows. The majority (51.1%) of the nearly 3,500 franchise brands in operation today have less than twenty franchised units in their system. Nearly a third of all franchisors (30.4% or 1,059 brands) have annualized systemwide sales of less than $5 million.[1]

By System Size (Franchised Units + Company Owned Units)		
Category	No. of Brands	%
Up to 20 Units	1779	51.1%
21 - 50 Units	528	15.2%
51 - 100 Units	370	10.6%
101 - 500 Units	595	17.1%
500+ Units	211	6.1%
Total	3483	100.0%

Source: FRANdata

A franchisee is first a local business, distinguished from other local businesses because it licenses the branding and operational processes of a franchisor, or brand company, while operating independently in a set location. The franchise model provides a smoother path to entrepreneurship than developing an independent business, with franchisors sharing confidential and proprietary information regarding site selection and development strategies, training programs and branding campaigns to facilitate faster speed to market for franchisees in addition to providing continuing operational support throughout the long-term franchise relationship. The local owner, or franchisee, is responsible for hiring staff, organizing schedules, managing payroll and all daily operational tasks—and critically, creating a distinct company culture and direct relationship with employees—as well as local sales and marketing. The value of franchising lies in a strategic balance in the relationship between a franchisor and franchisee: the independence of a franchisee to manage its day-to-day operations and connections with its employees, consumers, and the local community. The franchise business model gives aspiring small business owners head starts toward becoming their own boss, with a proven business model that can set up new business owners for success and easier access to lines of credit than a traditional business.

The immense value of franchising to business owners, employees and their communities is supported by empirical data. Oxford Economics finds that franchising offers a path to entrepreneurship for all Americans, but especially to underrepresented communities, including

[1] FRANdata research. (2023).

people of color, women, and veterans. Around 26% of franchises are owned by people of color, compared with 17% of independent businesses overall. For employees, franchised businesses perform better and provide better pay and benefits than their non-franchised counterparts. On average, franchises pay 2.2 – 3.4% higher wages than their non-franchised counterparts and offer greater benefits, including health care and paid leave. Franchises report sales 1.8 times greater than non-franchised businesses and provide 2.3 times as many jobs as their non-franchised counterparts. Furthermore, Black-owned franchise firms generate 2.2 times higher sales compared to Black-owned non-franchise businesses, on average.[2]

There are multiple public misconceptions about franchising. First, this testimony has already revealed that most franchisees *and* franchisors are far from big businesses. Second, franchising itself is not an industry, but rather a business growth strategy used *within* nearly every industry. More than 300 different sectors are represented in franchising. Franchise companies offer a vast range of products and services from lodging to fitness, home services to health care, plumbing, pest control, restaurants, security, and lawn care. Furthermore, franchising goes well beyond the "fast food" industry. In fact, 63% of companies that franchise are not in the food services at all, and 83% are not in fast food.[3]

There are two principal explanations behind the popularity of franchising as a method of distribution. One is that it "was developed in response to the massive amounts of capital required to establish and operate a national or international network of uniform product or service vendors, as demanded by an increasingly mobile consuming public."[4] The second explanation is that franchising affords the franchisee to be physically removed from the franchisor, giving autonomy to the franchisee to run their own day-to-day business operations. These two motivations are consistent with a business model in which the licensing and protection of the trademark rests with the franchisor, and the capital investment and direct management of day-to-day operations of each franchise unit is the responsibility of the franchisee who owns, and receives the net profits from, its individually owned franchise unit.

It is typical in franchising that a franchisor will license, among other things, the use of its name, its products or services, and its operational processes and systems to its franchisees. The systems developed by the franchisor and executed successfully by other franchisees with a proven record of performance is why many franchisees purchase a franchise. Franchisees look to the franchisor to promote and protect the trade names, trademarks, and service marks (collectively the "Marks") and brand by establishing and enforcing standards on all franchisees in a system. Such standards are essential for the protection of franchisees' equity in their businesses and consumers of the brand. These standards allow franchisors to maintain the uniformity and quality of product and service offerings and, in doing so, to protect their Marks, the goodwill associated with those Marks, and most importantly, consumer confidence in the Marks and brand. Because a core principle of franchising is the collective use by franchisees and franchisors of Marks that represent the source and quality of their goods and services to the consuming public, action taken to control the uniformity and quality of product and service offerings under those Marks is not merely an essential element of franchising – it is an explicit requirement of federal trademark law under the Lanham Act.

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[2] The Value of Franchising. (2021). Oxford Economics. Retrieved from: https://openforopportunity.com/wp-content/uploads/2022/05/IFA_The-Value-of-Franchising_Sep2021.pdf

[3] FRANdata research. (2021).

[4] Shelley, Kevin M. and Susan H. Morton. (2000). "Control" in Franchising and the Common Law, 19 Fran. L. J. 119, 121

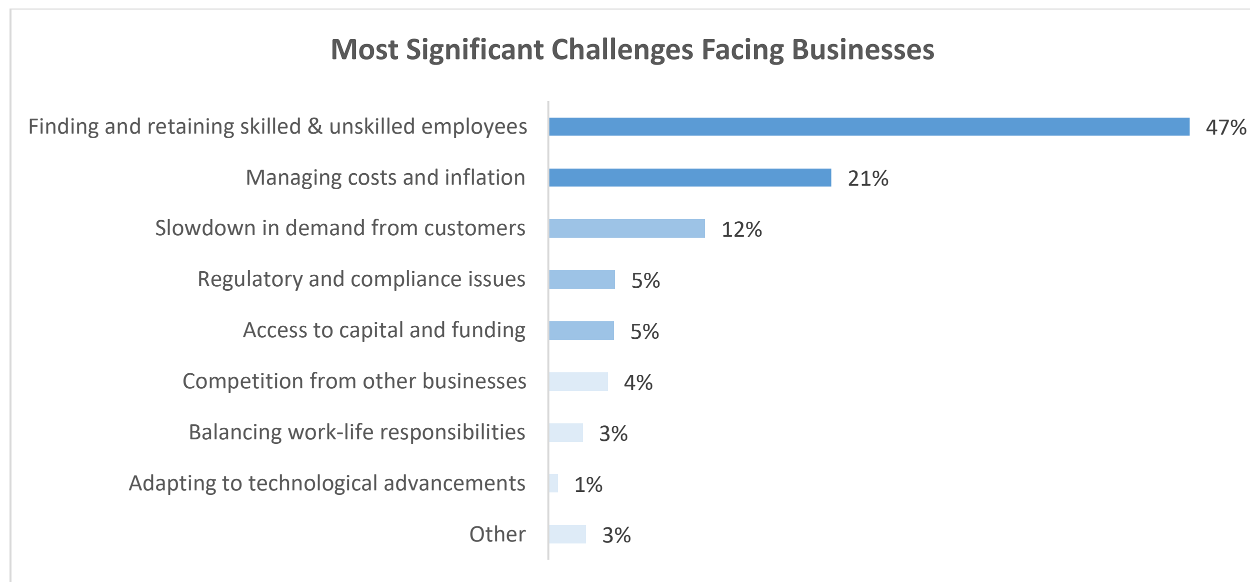
2. The State of Franchise Business Economic Recovery and Growth

The COVID-19 pandemic battered small businesses in historic ways. From March 2020 to August 2020, an estimated 32,700 franchised businesses closed. Of those, 10,875 did not reopen.

Franchise business owners are grateful to policymakers for the federal response. Members of Congress recognized franchisees and franchisors were independent businesses and that franchisees needed to be recognized as the small businesses that they are, regardless of their trademark affiliation with a brand. Ultimately, Congress made franchisees eligible to receive direct financial support through these programs, providing $525 billion in emergency funds extended through the Paycheck Protection Program and $194 billion through the Economic Injury Disaster Loan program, both of which were essential in keeping tens of thousands of small businesses afloat.

As a result, coming out of the pandemic, franchising experienced an explosion of growth in 2021, outpacing growth in other methods of business. While this growth has moderated since the initial rebound, franchise businesses remain on a path to recovery. Like all small businesses, franchises are still navigating economic headwinds, such as high inflation, labor shortages, and supply chain disruption.

IFA's September 2023 Annual Franchisee Survey showed that while franchisees feel inflation has marginally slowed compared to 2022, it still significantly impacts franchised businesses across all sectors. The chart below shows the most significant challenges facing franchised businesses in today's economic environment, according to franchisee feedback. Finding and retaining both skilled and unskilled workers remains by far the biggest problem facing franchisees today.[5]



Source: 2023 Annual IFA-FRANdata Franchisee Survey

In addition to labor challenges, rising costs and the other challenges noted above, franchisees reported the following impacts of the current economic climate on business operations:

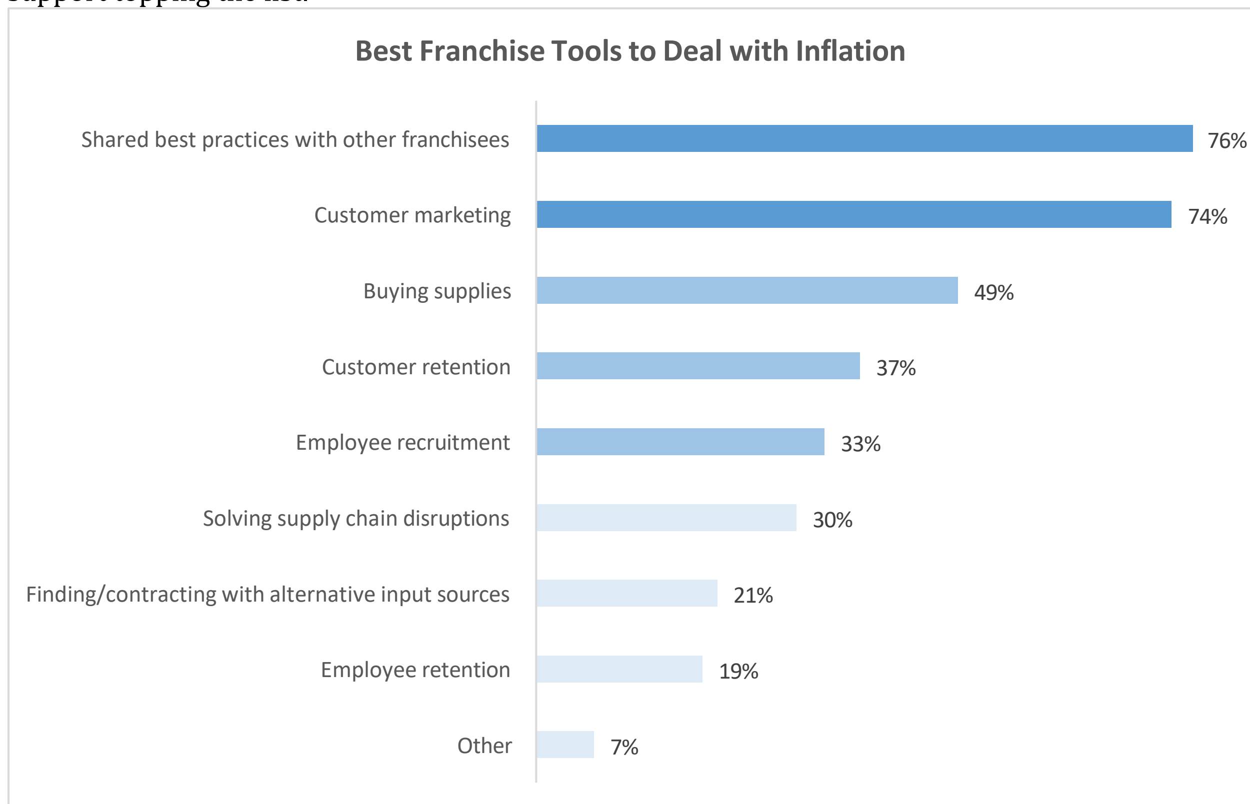
- 86 percent of franchisees reported feeling the effects of increasing costs on their operations, a

[5] 2023 Annual IFA-FRANdata Franchisee Survey. Retrieved from: https://www.franchise.org/media-center/press-releases/ifa-releases-annual-survey-on-inflation-impacts-on-franchised

marginal decline from the prior year.

- Nine out of ten business units reported having to raise their prices to combat cost increases.
- Labor remains the most significant challenge for rising costs, followed by insurance costs and inventory costs.
- 64 percent of franchisees are seeing reduced earnings attributable to inflation.
- 51 percent of franchisees expect inflation to get worse.

While the above challenges are not unique to franchised businesses, the Franchisee Survey demonstrates the reasons being part of a franchise system provides advantages for navigating rising costs. As demonstrated below, that being part of a franchise network provides a range of tools to cope with inflation and other operational challenges, with shared best practices and customer marketing support topping the list.



Source: 2023 Annual IFA-FRANdata Franchisee Survey

3. Franchise Relationships in Today's Economy

Despite the challenges described above, the state of franchise relationships remains extraordinarily strong. According to the most recent biannual Franchisee Satisfaction Report published by research firm *Franchise Business Review*, based on information obtained from over 30,000 franchisees across more than 300 franchise systems, 85% of franchisees enjoy being part of their franchise organization, 82% of franchisees respect their franchisor and are supportive of the brand, and 78% of franchisees would recommend their franchise system to others[6]. Franchise Business Review reported that its data reflected an all- time high in franchisee satisfaction, representing an increase of 3% over pre-

[6] Franchisee Satisfaction a Key Consideration Among Potential Franchise Buyers, FRANCHISE BUS. REV. (Dec. 28, 2022), Retrieved from: https://franchisebusinessreview.com/post/franchisee-satisfaction-a-key-consideration-among-potential-franchise-buyers/

pandemic satisfaction metrics.[7]

Franchisee satisfaction is further demonstrated by the continued viability and growth of franchised businesses described above. Despite supply chain disruptions, labor shortages, and high inflation, sales of goods and services by franchised business grew by 4.8% from the previous year, and the total number of U.S. franchised units grew by 2% from the previous year. This growth was fueled by the rise of franchisees with multiple units (or "multi-unit franchisees"), with over 50% of the franchise units controlled by multi-unit franchisees. Franchisee satisfaction is demonstrated by the continued viability and growth of franchised businesses. In 2022, the total number of U.S. franchised units grew by 2% from the previous year. This growth was fueled by the rise of multi-unit franchisees, with over 50% of the franchise units controlled by multi-unit franchisees. Multi-unit growth was observed across industries, with the most significant increases in quick-service restaurants, beauty/wellness services, full-service dining, real estate, automotive, clothing and accessories, and retail food.[8]

4. The Impact of the NLRB's Joint Employer Rule on Franchising

Without question, the biggest threat to the strength of franchise relationships, sustainability of the franchise model and future of the entire franchising community—including franchisees, franchisors, suppliers to franchise systems, and the hundreds of thousands of workers they employ and consumers they serve—is the NLRB's unnecessary joint employer rule, which was finalized in October 2023 and is scheduled to take effect in February 2024.

Departing from decades of precedent that required evidence of direct control over essential terms and conditions of employment, the new rule promulgated by the Board provides that one employer may be deemed the "joint employer" of another company's employees where it merely indirectly controls in any fashion an essential "term and condition of employment" of the second company's employees, or where it has reserved such rights (as is common in many business-to-business contracts), even where such reserved control has never once been exercised. In the new rule, the Board has adopted the broadest standard in NLRB history—a standard under which an employer can be deemed a joint-employer based solely on indirect or reserved, unexercised control over even a single term or condition of employment. Further concerning is the Board's broad definition of "essential terms and conditions of employment", which includes not only traditional essential terms of employment like hiring, firing, compensation and disciplinary action but also terms that also are applicable to independent contractor relationships like "work rules and directions governing the manner, means and methods of the performance of duties…" and "working conditions related to the safety and health of employees" (the latter being commonplace in many companies' corporate social responsibility policies applicable to the independent contractors with whom they contract). That is farther than the Board or any court has ever gone before.

A "joint employer" finding under the NLRA carries with it dramatic and significant consequences. A joint employer may be held liable for unfair labor practices (ULPs) committed by an unrelated company, even where the first had no control over the actions of the second leading to the ULP. A joint employer is subject to secondary activity, such as boycotting and picketing, which would otherwise be unlawful. Finally, and perhaps most significant, a joint employer (or dozens of joint employers) may be required to bargain with a union over any term or condition of employment over which it exercises (or reserves the right to exercise) even a modicum of control—a set of facts certain to frustrate any

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[7] *Id.*
[8] 2023 MEGA 99 RANKINGS, supra note 7. Retrieved from: https://www.franchising.com/articles/2023_mega_99_rankings.html

effort to reach agreement at the bargaining table.

We are confident the NLRB's final joint employer rule will harm small businesses in every district and state because that is what happened the last time the NLRB imposed a harmful joint employer standard. In 2015, the NLRB broadened the scope of joint employment in its *Browning-Ferris Industries of California, Inc.* ("*Browning-Ferris*") decision to include employers who *indirectly* or reserve the right to control terms and conditions for employees. This change of employment rules in the middle of the game fundamentally and unnecessarily altered the franchisor-franchisee relationship. Based on empirical data from the broad joint employer standard in place following the *Browning-Ferris* decision, the economic effects during the 2015-2017 period included:

- **Lost jobs.** The 2015 *Browning-Ferris* standard cost an estimated 376,000 job opportunities among franchise businesses.

- **Increased litigation.** From 2015 to 2017, *Browning-Ferris* led to a staggering 93% increase in joint employment-related charges or petitions being filed at the NLRB, and a sharp increase in litigation costs for small businesses.

- **Restricted support to franchise small business owners.** To protect themselves from frivolous litigation, the 2015 *Browning-Ferris* standard compelled franchisors to limit their communication on employment-related matters, including compliance education, HR, and legal resources previously offered to franchisees. These changes negatively affected the value of proposition of going into business alongside a brand partner.[9]

Despite the data confirming the harm of the previous *Browning-Ferris* joint employer standard, the NLRB has largely restored the *Browning-Ferris* standard (and in fact gone beyond it in its overbroad final rule) all in a misguided effort to needlessly update the merely three-year-old joint employer rulemaking. The NLRB's rule would greatly expand the joint employer standard beyond what franchisees have come to expect. The joint employer standard that was in place for three decades from 1984-2015 required a putative joint employer to exercise "direct and immediate control" over an employee's essential terms and conditions of employment in more than a "limited and routine" manner. Now, the rule unnecessarily departs from that standard and specifies that (1) indirect control and retained or reserved control (even if never once exercised) would be sufficient on their own to establish a joint employer relationship, (2) any exercise of control—not just "substantial" control—is sufficient to establish a joint employer relationship, and (3) while control must be exercised over "essential terms and conditions of employment," there is no clarity on what the "essential terms and conditions" are.

As described previously, a successful franchise system (and federal trademark law) requires its franchisees to maintain brand standards and ensure uniformity of operations from unit to unit. To achieve these aims, franchisors must train franchisees on brand standards and operational methods, expect franchisees to teach their employees those standards and methods, and periodically confirm through inspection that their franchisees and their employees are doing so. The final rule threatens to make a franchisor a joint employer merely for adhering to the basics of such a franchise system.

For example, because the final rule's definition of "essential terms and conditions" of employment is vague and unbounded (including, for example, "work rules and directions governing the manner, means, and methods" in which work is performed, as well as any working conditions "related to the

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[9] The Economic Impact of an Expanded Joint Employer Standard (2019). International Franchise Association. Retrieved from: https://www.franchise.org/sites/default/files/2019- 05/JE%20Econ%20Impact%200128.pdf

safety and health of employees”), it is unclear whether a franchisor's efforts to maintain brand standards and ensure uniform operations will be deemed "indirect" or "reserved" control over an "essential term and condition of employment." Further, it is unclear whether a franchisor that provides optional tools and resources to its franchisees to use in running their business would be deemed to exert "indirect" or "reserved" control over employees of a franchisee who chose to use such tools and resources. Given these facts, the Board’s effort to minimize franchisor’s legitimate concerns in the Preamble to the final rule (which itself is not codified) by noting that “many” (but presumably not all) controls relating to, *e.g.*, logo and store design, will “typically” (but presumably not always) not be indicia of joint employment is of little comfort.

In effect, the NLRB has created a catch-22 situation for franchisors that will ultimately harm franchisees, employees, and the consuming public. Under any scenario, there are no winners at the franchisor, franchisee, employee, or customer level. Practically speaking, franchisees and their employees are left with at least three different negative consequences based on the actions a franchisor will be forced to take as a result of the NLRB’s expanded rule:

1. Franchisors may need to increase their involvement in the operations of franchisees to reduce the likelihood of legal liability as a joint employer. Under this scenario, franchisees are essentially “converted” to employees of the franchisors by government dictate. As independent small business owners, franchisees did not get into business and build equity to be monetized for themselves and their families to effectively become employees of their brands. The independent nature of franchising, coupled with the ability to leverage a brand and a playbook, is the essence of what makes the franchise model successful, and allows a franchisee to monetize their equity value over years or decades. With the stroke of a pen, a government agency will be wiping out billions of dollars in value creation of franchisee equity under this proposed rule. The 2019 study noted above found a 93 percent increase in litigation against franchise businesses because of the previously expanded joint employer standard in place from 2015-2017.

2. Franchisors would likely be compelled to increase franchise fees to offset costs or potential costs associated with joint employment liability. If franchisors now have shared liabilities of costs with their franchisees (such as the costs of the employment of thousands or hundreds of thousands of employees they don’t currently employ), they will undoubtedly increase the fees they charge their franchisees to operate a business under their brand, and these costs will also get passed on to consumers, a particularly problematic outcome given the current state of inflation impacting American households. For a franchisee, the higher fees mean there are fewer resources available to pay employees, or that they must reduce their overall number of employees. Worse yet, franchisors might ultimately decide the cost of joint employer liability is too great altogether and may simply abandon the franchise business model, opting for a corporate model instead, eliminating the ability for future franchisees to go into business for themselves. This is a particularly acute problem for the lion’s share of small and emerging brands, which constitute the majority of franchise systems as noted above.

3. Franchisors might attempt to distance themselves from franchisees to minimize the risk of a joint employer finding, which could be viewed as the worst alternative. For example, a franchisor might reduce or eliminate the optional tools and resources it historically provided to franchisees, such as sharing template employee handbooks or hosting a job board platform to assist with recruitment of employees. As cited in the 2019 IFA study noted above, the

impacts of the NLRB's 2015 *Browning-Ferris* decision "created an incentive for franchisors and other core businesses to back away from earlier business arrangements and interactions with franchisees, suppliers and support contractors." The result of this "distancing" behavior by franchisors was between $17.2 billion and $33.3 billion per year lost output equivalent to the franchise sector and between 194,000 and 376,000 lost job opportunities in 2016.

In September 2023, Oxford Economics released a survey report confirming that franchisees are concerned about any of these outcomes under the NLRB's final rule. The report revealed the NLRB rule will increase uncertainty among franchisees, increase costs for franchisees, franchisors and their consumers, as well as decrease access to business ownership in franchising. The specific findings in the report include:

- Seventy-four percent of franchisees expressed a high level of concern at the prospect of increased franchisor control due to the NLRB rule, and 55 percent expressed a high level of concern with reduced franchisor support.
- Forty-three percent of franchisees expected some change in the franchisor/franchisee relationship as a consequence of the NLRB rule. Twenty-two percent of respondents expected franchisors to increase control over their operations, whereas 21 percent expected franchisors to distance and reduce operations and compliance support, and 38 percent did not know what to expect.
- Sixty-six percent of franchisee respondents expected the new NLRB standard to raise barriers to entry into franchising with women and entrepreneurs of color being disproportionately harmed.
- Seventy percent of franchisees expected increased litigation and the costs associated with it, as consistent with the results of the 2015 standard.
- Franchisees anticipate additional costs including increases in legal and advisory fees as franchisees and franchisors navigate compliance under the new rule, in addition to greater insurance and operational costs.[10]

As I have discussed, franchising provides a pathway to ownership for women and people of color at disproportionately greater rates. As seen in comments submitted to the NLRB last year, this rule would jeopardize all future franchise growth and progress. Some of the comments filed with the NLRB in response to its joint employer rule are below:

- According to the National Asian/Pacific Islander American Chamber of Commerce, *"Many AAPI small business owners are franchisees. We are concerned that franchisors, in an effort to protect themselves against more liability and financial obligations under the proposed rule—which will expand new responsibility for employees they do not employ and workplaces they do not control—would move to end or limit their support of franchisees. This would ultimately stifle entrepreneurship, business innovation, and flexibility. The rule is likely to disproportionately impact women, minorities, and disadvantaged communities who may need alternatives to traditional business models and financing to start-up or scale their businesses. The rule could disincentivize programs like McDonald's current franchisee recruitment initiative, which has committed $250 million in the U.S. over five years to provide alternatives to help those facing*

[10] Potential Consequences of the NLRB Joint Employer Rule. (2023). Oxford Economics. Retrieved from: https://www.franchise.org/sites/default/files/2023-09/Oxford%20Economics%20Report%20for%20IFA%20on%20Joint%20Employer%20Rule.pdf

socio-economic barriers to accessing traditional financing."

- According to the U.S. Black Chambers, *"The proposed rule places barriers to entrepreneurial and business development and lack of control over their own business. Black entrepreneurs face greater risks under the proposed rule than ever before, especially if they plan to utilize contract models, contract workers, or temporary workers and vendors to fulfill the day-to- day operations of their firms. Increased liability for both the small business owner and outside vendors reduces the likelihood of business opportunity across all industries. The U.S. Black Chambers firmly believes that the entrepreneur who takes on the risk of starting and operating their business should be allowed to maintain full control over all employees, contracted labor, and use of third-party vendors without sharing control with an ambiguous joint employer as defined by the proposed rule. While we recognize that the rule is well-intended, we caution against the significant harm that will come to Black firms under the implementation of a final rule. We ask that the NLRB take into account the position of Black firms when formulating the final rule by clarifying responsibility, compliance costs, and expectations of firms to reduce unnecessary legal costs, liabilities, or malpractice."*

- According to the Association of Women's Business Centers, *"The rule in its current form would diminish the controls of franchisees and impede the pathway to ownership, ultimately driving women away from franchising…The impact on the franchisee-franchisor relationships would significantly change and create a barrier to entry for women entering the franchisee industry – especially considering that women on average are more risk-adverse in nature. With more women coming through women's business centers (WBCs) across the nation that are utilizing franchising or contracting, many are considering succession planning if this rule becomes law."*

- According to the Asian American Hotel Owners Association (AAHOA), *"This proposed rule could cloud the employment status of many workers. Like any business, hotels are often dependent on outside vendors. Linen suppliers, landscapers, food and beverage deliverers, and construction workers are just a few examples. Hotels, by their very nature, are asset-heavy businesses. This combined with the uncertainty of the proposed rule could make AAHOA Members targets for litigation."*

- According to the National LGBT Chamber of Commerce, *"Current legal uncertainty will discourage franchise business operations. Franchisors will be forced to forfeit their free space of operation. The new joint employer rules also put at risk workforce development and apprenticeship training programs that make franchised companies attractive to entrepreneurs. Enforcement of stringent conditions without any legitimate cause will also impede upon the crucial business opportunities afforded to diverse and marginalized business communities, and in turn, reduce their opportunities to build and sustain generational wealth."*

Even the U.S. Small Business Administration's Office of Advocacy wrote how the NLRB rule will be a barrier to entry for small businesses seeking federal contracts; how it will add thousands of dollars a year in compliance costs; and how it will harm women-owned, Black-owned, Latino-owned, and other minority-owned small businesses.[11]

[11] Clark, Major L. and Janis C. Reyes. (November 29, 2022). [Letter from U.S. Small Business Administration Office of Advocacy to National Labor Relations Board]. Retrieved from: https://advocacy.sba.gov

The NLRB and Congress should listen to the thousands of opposing comments against the rule and look again at the macroeconomic impact of the previous, harmful joint employer standard. While this opposition and data should be sufficient evidence of the problems created by the NLRB's previous actions, it is also useful to examine the record of specific examples from both franchisors and franchisees about how an expanded joint employer rule negatively impacts their real-life businesses and their employees. Below are a few testimonials drawn from more than a dozen franchise business witnesses who have testified before Congress in the past several years, and in comments submitted to the NLRB during it request for public comment on its then-proposed rule:

- *"Countless people in the franchise industry start out in administrative roles like mine – or as busboys, line cooks or cashiers – and move up to become multi-unit owners. Stories like ours are celebrated as some of the greatest American success stories there are, and the franchise structure is, in large part, responsible. It has provided each of us with so many opportunities to succeed, and I am hopeful that it will remain intact so that it can continue to afford other hardworking employees similar paths to success…. As a local business owner, I am very fortunate to have the platform to provide job opportunities for my neighbors seeking employment."* – **Tamra Kennedy, Taco John's franchise owner.**

- *"Our small business is named after New York City's Ellis Island, through which my family members entered America to pursue a better life… My parents then immigrated to the U.S. in 1967. In order for the family to grow their business, they called upon other family members to also join them in the business so they too could live their American Dream… As a franchise business owner, I have worked so hard to provide for my family, employees, customers and stakeholders in my community. But along the way, franchising has afforded me every opportunity to succeed, no matter where I came from, my background, my gender, color of my skin, or any other personal characteristic. It is a business format every policymaker should support. An expansive joint employer standard would undoubtedly rid franchise business owners like myself of the hard-earned equity and effort we have invested into our hotels and other establishments."* – **Jyoti Sarolia, Principal & Managing Partner, Ellis Hospitality.**

- *"After serving in the military, my father's entrepreneurial spirit and desire for financial security led him and my mother to purchase their first McDonald's-brand restaurant in 1984. In the ensuing decades, our family business grew to include many more restaurants, and I became an approved owner-operator working alongside my parents…At the same time, our business's success has benefited our employees ("team members") and the communities where we operate as well. We are proud to have created extensive job opportunities that offered better wages, benefits, and experiences than our competitors. We provide our teammates with opportunities for advancement, basic to advance work experience, career opportunities and, for those who choose to pursue opportunities elsewhere, transferable skills that will serve them well in future endeavors. And beyond our significant contributions as an employer of choice in our communities, we have consistently focused our philanthropic efforts on the institutions that we believe are central to our communities' future success: one example is our over $100,000 donations made for the purpose of benefiting local schools. The proposed joint employer rule threatens to undermine our business's success an, in turn, irreparably harm our team members and local communities."* – **Courtney Escalante, McDonald's franchise owner.**

Taken alone, each of these consequences warrants the NLRB abandoning its joint employer rule – and we urge the Board to do so. Taken together, they illustrate how Congress must act to stop this harmful rule.

For the past decade, the franchise business model and many of our member companies and franchisees have been the target of a corporate campaign led by the Service Employees International Union (SEIU). The objective of this campaign is to collapse the independent relationship between franchisors and franchisees by declaring the franchisor to be a joint employer with its franchisees. This objective would disenfranchise the workers who currently enjoy the many benefits of employment by small business owners for the purpose of achieving a more efficient path for labor organizations to unionize all workers across a franchise system. Following the issuance of the joint employer rule in October, the SEIU, along with the AFL-CIO and the International Brotherhood of Teamsters, urged lawmakers to support the measure because it would encourage collective bargaining. While declaring a franchisor and its franchisees to be joint employers might facilitate efficient unionization across franchise systems and advance labor union agendas, it would have the devastating consequence of taking away the opportunity to own a franchise business and simultaneously destroying the franchise business model that powers the U.S. economy.

In response to the NLRB's issuance of the new joint employer rule, IFA, together with 11 co-plaintiffs, including the U.S. Chamber and trade associations representing the restaurant, hotel, retail, convenience store, and construction industries (collectively, the "Coalition"), immediately moved to challenge the NLRB's new rule as well as its rescission of the Board's joint employer rule issued just three years ago in federal court in the Eastern District of Texas, citing violation of the Administrative Procedure Act and the Board exceeding its authority. The Coalition seeks a court order setting aside the Board's new rule and setting aside the rescission of the rule issued in 2020 prior to the new rule taking effect in February 2024. However, the outcome of that litigation has been complicated by the SEIU's petition for the Board to review (and, as we understand it, expand) the already expansive joint employer rule in a suit filed in the DC Circuit court concurrently with the Coalition's suit and the Board's subsequent request to transfer the Coalition's suit to the DC Circuit court and combine it with the SEIU suit. This litigation will likely take many months, if not years, and this timeline underscores the need for Congress to enact a timely legislative solution for the joint employer interpretation of the NLRA and provide some near-term certainty to small businesses.

Indeed, we believe Congress has a choice to make: should the NLRB be allowed to implement its rule and break the franchise model or should Congress step in and preserve this business model that has helped thousands of brands provide the American Dream of small business ownership to people from all walks of life? We urge Congress to examine the NLRB rule and strike it down.

IFA supports bipartisan efforts to overturn the NLRB's harmful rule using the Congressional Review Act (CRA), and we are grateful for the bipartisan support this effort has already attracted in Congress. A bipartisan and bicameral coalition has already introduced a CRA resolution of disapproval that would overturn the final joint employer rule, and it is led by U.S. Representatives John James (R-MI) and Virginia Foxx (R-NC) and U.S. Senators Bill Cassidy (R-LA) and Joe Manchin (D-WV). The CRA is one of the most effective means for Congress to provide a check on Executive branch overreaches such as this one, and we are grateful to this bipartisan group of lawmakers for their swift and decisive action to protect franchising. A diverse group of more than seventy organizations, consisting of workers, small businesses, and other critical sectors of the economy have urged lawmakers to support the CRA.[12]

IFA also supports language in the House Appropriations Committee's FY 2024 Labor, Health and Human Services and Education Appropriations bill to prohibit funding for implementation of the joint employer rule.

[12] https://savelocalbusinesses.com/app/uploads/2023/12/FINAL-Coalition-Letter.pdf

Finally, we applaud the Committee for considering H.R. 2826, the *Save Local Business Act*, introduced by U.S. Representative James Comer (R-KY). This bill would codify a permanent joint employer standard based on direct and immediate control of a business and prevent the NLRB from imposing unworkable standards in the future. The *Save Local Business Act* is also part of U.S. Representative Rick Allen's (R-GA) H.R. 2700, the *Employee Rights Act.* IFA supports both the *Save Local Business Act* and the *Employee Rights Act* because they protect franchise businesses from the NLRB's joint employer overreach.

Thank you again for the opportunity to testify, and I look forward to working together to protect, enhance, and promote franchised businesses across the United States.

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