

TESTIMONY OF SEAN FALK
PRESIDENT AND OWNER OF
WOLFTEA, LLC AND NACHOGANG, LLC
BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS

"State of the Small Business Economy"

FEBRUARY 13, 2013

Chairman Graves, Ranking Member Velázquez, and members of the Small Business Committee, thank you for your invitation to testify at today's hearing. I am honored to have the opportunity to speak with you regarding the current state of small business in America. I believe my role as a small business owner qualifies me to provide my perspectives regarding this important business sector. I believe that small businesses are the economic cornerstone to every community. Thank you for your service and commitment to fostering small businesses in the United States House of Representatives.

My name is Sean Falk and I own and operate 12 franchised business units. With 43 full-time employees, I am a proud participant of the diverse franchise community which supports over 8 million jobs per year. You may recognize some of the businesses I operate: *Salsarita's Fresh Cantina*, *Great American Cookies*, *Mrs. Field's Famous Brands*, and *Pretzelmaker*. I bought my first franchise in 1998 and through 2008 I was opening, on average, one store per year.

With supportive economic policies in Washington, franchising is poised for significant success, even given the recent economic downturn. According to the International Franchise Association's Franchise Business Economic Outlook for this year, our industry is poised for modest growth in 2013 of about 2 percent, an estimated 162,000 new jobs and 10,000 new establishments, but could grow even faster creating more new jobs and businesses, if Washington addressed the tax, spending and regulatory uncertainty plaguing the small business community in a more meaningful way.

Small Business Industry Today

The small business community is still facing trying times. As profit margins are lower than ever, it is much harder to open more stores—even when the desire to do so is present. In today's economic reality, small business owners are forced to make time consuming measures to grow their business like visits to multiple banking institutions in search of one simple business loan. The same incentive of years past no longer exists for entrepreneurs to purchase franchise agreements and work 80 hours per week. Profit margins in the 1990's were 10-15% of all sales. Today, that number is about 5%.

Small business owners are also faced with many other factors and forces in which government plays a direct or indirect hand. As a business owner, we have no ability to plan for the future when Congress passes and extends regulations for only one year at a time. The constant moving target created by short-term fixes makes it extremely difficult for me to evaluate an opportunity to see if it will be worth my time, money, and effort to expand my business. This uncertainty makes it next to impossible to execute a long-term plan to do so.

There are also the impacts of the new health care law, commodity prices, fuel prices, unemployment insurance rates, U.S. dollar exchange rate and others. All of those factors cut into shrinking profit margins and create disincentives to business growth. Raising the price of our product for the consumer is not an option. They will choose to not expend their limited, discretionary income for this purchase.

Access to Credit

Prior to 2008, I had a very easy time working with local banks to secure financing on business loans to open new stores. As I mentioned earlier, opening one store per year meant I was in frequent contact with my banking institution. Often times I would be approved with delivery of a check in one business day. I cultivated good relationships with these banks because I always paid my loan on time or early.

In 2008, when the financial markets started to go south, so did my ability to access capital. Banks began to tighten their budgets at a time when I was still growing. Unfortunately, from 2008-2011 my business did not grow and I opened no new stores. I certainly felt the credit crunch because after visiting six area lenders I learned they were not approving any loans. I had several active loans in good standing that were paid regularly and on time. Since loans were not being processed, I even tried, with no success, to refinance some of the current debt that I held. Banks were certainly not very consumer friendly during this time.

However, in 2011, I felt a change in the economic tide. Banks were reaching out to me offering loans. The caveat was that the loans must be backed by the SBA. The application and loan approval process for an SBA loan took over six months. The process was costly as it forced me to push back the opening of my stores. I finally opened two new franchised businesses in April and May of 2012. During the SBA loan process, I had signed and purchased four new franchise agreements. Two of the franchise agreements I had entered into have unfortunately since expired with no refund for me due to difficulties in securing appropriate lending.

Affordable Care Act Implementation

Implementation of the Affordable Care Act (ACA) is a burdensome and complex business challenge for me in 2013 and beyond especially given the constant changes, waivers, extensions, regulations and clarifications of an already cumbersome new law. Already, I have to worry with the legalities of health care exchanges, employer shared responsibility (ESR), and

full-time equivalents. Now I am familiarizing myself with the government's Federal Register, waiting to see what new regulations will become final from The Department of Health and Human Services or the Treasury regarding implementation. All of these tasks take me away from my core mission of growing my business.

Two specific issues that I am concerned about are:

1. The 30-hours of work threshold that qualifies an employee as full-time status
2. The 50 full time equivalent employees threshold that requires employees to participate in ESR

Currently, I employ 43 full-time equivalent employees. If my business grows and I employ more people, I will be forced to pay for their health care insurance through the ESR section of the law. This has a large economic impact on my bottom line and may cause me to cease further growth. Also, I may be forced to keep my staff from working more than 30 hours per week so that they do not acquire full-time status to help avoid paying costly health care costs. As a business owner I will need to learn how these percentages are calculated and applied to my work force. I fear that it may be a struggle just to keep the doors open on my 12 existing businesses.

Summary

Although I would relish the opportunity to grow my business, the recent burdens placed on small businesses and the uncertain economic climate have given reason for pause. I plan to weigh the pros and cons of ACA before deciding on future growth and closely follow the negotiations on tax reform this year as those issues will also have a great effect on my bottom line. How Congress treats LLCs and addresses AMT during the tax debate will greatly impact my operations. The state of the small business economy is fragile. I hope policymakers will consider focusing their energies on addressing the burdens we face like securing capital access and implementing ACA in a business friendly manner. Its' time to address these fundamental challenges facing our economy that are keeping business owners like me and and prospective investors on the sidelines.

Thank you for this opportunity and I look forward to answering any questions from the Committee.