



FRANCHISING®
Building local businesses,
one opportunity at a time.

October 26, 2017

RE: Joint Employer Legislation in North Carolina

Dear Representative:

As your constituent and a member of the International Franchise Association (IFA), I am writing to inform you of recently enacted legislation in the North Carolina Legislature that supports locally owned franchise businesses, and ask you to follow suit in Congress by supporting federal legislation, H.R. 3441, the “Save Local Business Act,” that would provide needed clarity to harmful “joint employer” liability.

The state bill, S.B. 131, introduced by Senators Andy Wells, Bill Cook, and Norman Sanderson, passed the North Carolina Legislature on April 6, 2017, and was signed into law by Governor Roy Cooper on May 5, 2017. This newly enacted legislation provides needed clarity to franchise businesses in our state against the National Labor Relations Board’s (NLRB) extreme expansion of the common sense joint employer liability standard through its August 2015 decision in *Browning-Ferris Industries* (BFI). Passed in a 35-13 vote in the Senate, S.B. 131 protects the successful franchise business model by making clear that franchise employees are appropriately considered employees of franchisees, not franchisors, in North Carolina law. Franchisees like me are thrilled with this new law, and we commend Senators Wells, Cook, Sanderson, Rabin, and the rest of the North Carolina Senate for supporting franchise businesses and fighting back against the NLRB’s overreach.

While our new state law is a constructive development, unfortunately it is still preempted by the National Labor Relations Act. What’s worse, other federal agencies like the Wage and Hour Division and others have capitalized on the NLRB’s overly broad joint employment precedent to pursue small business owners under statutes in their jurisdictions. Therefore, franchise business owners urge you to stand up for them by working with your colleagues to pass H.R. 3441 in Congress that would simply and sensibly restore the long-standing, traditional definition of joint employment based on “actual, direct, and immediate” control of employees.

For the last four decades, a bright line standard has existed to define a joint employer relationship. If a company directly and immediately controls wages, hours, and labor practices, then it may be considered an “employer” in federal labor law, and appropriately so. The certainty of this standard has facilitated the growth of the incredibly successful franchise business model; franchise businesses currently employ nearly nine million Americans and 294,400 employees in North Carolina. *

However, a franchise business can no longer have certainty it is not a joint employer simply because it has no direct control over certain employees. In August 2015, the NLRB created a

* FRANData Key Findings and Survey Results: 2015 National Labor Relations Board Joint-Employer Ruling. FRANData. (2015).

new joint employer standard in federal labor law in its highly anticipated BFI decision. The NLRB ruled that BFI and a contractor were joint employers based on BFI's "indirect" and even "reserved," yet unexercised control of the contractor's employees. As a result of the decision, if an employer has merely the unexercised potential to direct certain employees, it may be ruled a joint employer over employees that it has neither hired nor managed.

The North Carolina Legislature has responded to small business owners who are concerned that the new joint employer standard will needlessly harm the economic growth and opportunities for success that franchising offers in your state. Now, with the introduction of the H.R. 3441, the Save Local Business Act, we need Congress to act on the bill to provide more meaningful protection for local businesses across the country. We look forward to working with you to restore the traditional, common sense joint employer liability standard.

If you have any questions, please contact me or Michael Layman, Vice President of Federal Government Relations, at the International Franchise Association at 202-662-4177 or m Layman@franchise.org.

Sincerely,



Robert McDevitt, Senior Vice President
Golden Corral
Raleigh, NC



Sam Ballas, Chief Executive Officer
East Coast Wings & Grill
Winston-Salem, NC



Matthew Lewis, Owner
Sport Clips
Raleigh, NC

CC: Members of the North Carolina congressional delegation