



COALITION TO SAVE LOCAL BUSINESSES

DANNY FARRAR

CEO AND FOUNDER

**SOLDIERFIT
FREDERICK, MD**

**TESTIMONY BEFORE THE U.S. HOUSE SMALL BUSINESS
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT AND
REGULATIONS**

**HEARING ON “RISKY BUSINESS: EFFECTS OF NEW JOINT
EMPLOYER STANDARDS FOR SMALL FIRMS”**

MARCH 17, 2016

Good morning Chairman Hardy, Ranking Member Adams, and distinguished members of the Subcommittee. My name is Danny Farrar, and I am the CEO and Founder of SOLDIERFIT. It is an honor to be in Washington today before you, and I am humbled by your invitation to speak on behalf of the hundreds of small business owners like myself who are members of the Coalition to Save Local Businesses. The CSLB is a diverse group of locally owned, independent businesses, associations and organizations that is devoted to protecting small businesses by restoring the “joint employer” legal standard based on “direct control” in federal labor law. I also am a member of the International Franchise Association, the world’s oldest and largest organization representing franchising worldwide. I appreciate the opportunity to tell you my story and explain how the issue before us today will impact small businesses like mine.

When the National Labor Relations Board (NLRB) decided to change the joint employer liability standard in August 2015, it was a scary moment for local business owners like me. For decades, the joint employer standard has protected businesses like mine from liability for employees over which they do not have actual or direct control. That has always made sense. But now, in adopting this new ambiguous *indirect* control standard, the NLRB has made employers potentially liable for employees they do not employ. This new standard jeopardizes countless business partnerships in numerous industries. Any legal doctrine that is based on “indirect” and even unexercised, “reserved” control, such as this one, is so unclear and unpredictable that no one can assure small businesses that their operations are not in violation. That’s why I, and so many small business owners around the country, are so concerned. We are being forced to try to grow and operate under such great uncertainty because of this new standard.

So Mr. Chairman, I’m not asking for much today. I’m simply asking this Subcommittee and the Congress to protect local businesses. Specifically, I’m asking to reinstate the very successful joint employer legal standard that the NLRB chose to change in its August 2015 decision in *Browning-Ferris Industries*. The simple, one-sentence legislation contained in H.R. 3459, the Protecting Local Business Opportunity Act, is the solution that can protect small businesses like mine and give us certainty that federal agencies are not going to threaten our businesses in the future. I urge every member to support the bill.

MY SMALL BUSINESS STORY

Mr. Chairman, I am a small business owner and an entrepreneur. By working extremely hard and expending immeasurable time and energy, I founded a successful company that has three locations and we are opening a fourth very soon. But Mr. Chairman, I also am a franchisor; we recently awarded our first two franchises to further grow our concept. And the threat of unlimited, unpredictable joint employer liability is very scary. It threatens everything my partners and colleagues have worked to build in our community.

So while some people may hear the term “franchise” or “franchisor” and think only of major corporations, they can also think of me, my small business, and my story, and the story of hundreds of thousands of both franchisors and franchisees who are small business owners.

Together with my friend and mentor, Dave Posin, I co-founded SOLDIERFIT, a fitness company committed to the ideals of community, patriotism, and the pursuit of the American Dream. In just over 5 years, our company has grown to 3 corporate locations in Maryland, soon to be 4, and we have recently awarded our first 2 franchise locations. I also am the founder and president of Platoon22, a non-profit I started to combat the depression and dislocation that leads 22 veterans a day to take their own lives. I am an eight-year military veteran who served in the U.S. Army, including a combat tour in Iraq, a former firefighter and EMT, and a certified personal trainer with over a decade of experience. As you can see, I've held many positions throughout my life. While today I appear before you as a successful business leader, my road here was long and challenging.

My story begins when I was 2 years old and my great aunt and uncle adopted me. I was different from my adopted family. I had a different personality, and so from a very young age, I was deemed lazy and worthless. The negative experiences of my early childhood would set a tone that plagued me for many years afterwards.

By the time I graduated from high school, where I graduated 146th out of 147 kids, I had very few options for my future. At a time when so many of my peers were beginning their adult lives full of hope for the future, I began a different journey, one that would be plagued with misery, contempt and trauma.

I left for boot camp after graduation and, shortly thereafter, my adoptive mother died of breast cancer. Six months after that, my brother took his own life.

On September 11, 2001, I took the first Army Team into the Pentagon to begin the process of searching for remains. With every step I took, my anger grew. I wanted to be deployed to avenge that day, but my unit was not eligible. I ended up leaving the service.

I took jobs here and there, with one at a fitness club where I met my SOLDIERFIT co-founder, Dave Posin. I ended up getting fired while Dave got promoted to General Manager. With no job, no income, and horrible credit, I ended up homeless. Dave helped me find couches to sleep on so I could survive, so to speak.

With no clear goals for my future, I once again turned to the military. One month later, I was in Iraq, where I completed more than 700 convoy missions. I've been blown up and shot at just about anywhere you can get blown up and shot at in Iraq. Prior to heading overseas, I was full of cracks. Coming home, I was officially a broken man.

The only job I could get upon my return was going door-to-door selling windows. My "colleagues" were all in high school. Imagine that, returning from Iraq where I led troops in combat to a job high school kids did to earn extra spending money.

I wanted desperately to get out of the pit I was in, but I was scared to try anything for fear of failure, not realizing that every time I refused to try, my failure was assured. The life I dreamed of seemed so far beyond my grasp. I had no title, no purpose. I wasn't a manager; I

wasn't a graduate; I didn't come from money; and I had no family. How on earth could someone like me dig myself out of this hole that had become my life?

I ultimately hit rock bottom. I drank, self-medicated, and ultimately decided my life was not worth living. Somehow I got a second chance. I woke up the morning after I tried to end my life in the psyche ward, and for three days, I was surrounded by people who convinced me that the only way out was to repair my cracks and begin climbing out of the wreckage. With the help of mental health professionals and mentors, I began again.

Today, I lead a company that has been the recipient of the small business of the year awards in Germantown, Frederick, and the State of Maryland. I have been awarded the "Top 40 under 40" of the very important professionals shaping the future of Maryland. I was a top 5 finalist for Men's Health "Ultimate Guy" contest. I have gone from the kid who barely graduated from high school to giving the commencement address at one. I have gone from the young adult who was homeless to owning a business that is slated to make over \$3.2 million this year.

Through my non-profit, Platoon22, I am helping brave service men and women who have charged into combat on behalf of our nation, only to return irreparably scarred—physically, mentally, or both.

The SOLDIERFIT team also is active in the International Franchise Association's VetFran program, which provides career opportunities to veterans and their families to ensure an easier transition back into the civilian economy. Together with a network of over 650 franchise brands, VetFran voluntarily offers financial discounts, mentorship, and training for aspiring veteran franchisees and veterans seeking employment. Under this program, over 238,000 veterans and military spouses have found employment opportunities, including 6,500 veterans who have become franchise business owners since 2011. I am humbled to be part of this network and, more importantly, in a personal position to help the tens of thousands of service men and women returning from overseas deployments, some of whom are as lost as I once was.

SMALL BUSINESS IMPACT

Mr. Chairman, from the perspective of a small business, it appears regulators are attempting a corporate takeover of Main Street by changing the definition of a joint employer. If Washington regulators make large, primary companies liable for the employment and labor actions of third-party vendors, suppliers, franchisees or subcontractors over which they have no direct control, large companies may be compelled to exercise more control over these small businesses to limit their NLRA liability. Consequently, local business owners may effectively be demoted from entrepreneur to middle manager, as they are gradually forced to forfeit operational control of the stores, clubs, inns or restaurants they built. Not to mention, the enterprise value of thousands of franchises and small businesses may decrease because of the decreased operational control. Further, large companies may be forced to bring services in house rather than

hiring a small business to do the work. Joint employer means big companies will get bigger, and small businesses may run out of business partners and ultimately fade away.

A leading firm that conducts research on franchise businesses, FRANdata, released in November 2015 a survey report entitled “FRANdata Key Findings and Survey Results: 2015 National Labor Relations Board Joint-Employer Ruling.” FRANdata surveyed industry leaders and stakeholders, conducted secondary research, and examined franchise company filings to assess the potential negative impact of the NLRB ruling on franchise businesses and indirectly on the economy.

Among the most significant findings of the report are:

- An estimated 40,000 franchise businesses, affecting more than 75,000 locations, are at risk of failure because of the joint-employer ruling, which will increase labor and operating costs beyond operating margins.
- As a result of business failures, downsizing, and a decline in the rate of new franchise business formation, more than 600,000 jobs may be lost or not created.
- The equity value of franchise businesses is expected to drop by a third to a half. Rising costs will have a negative multiplier effect on valuations. Potentially, hundreds of thousands of franchise business owners will see the equity they have built in their businesses over years decline as the advantages of the franchise model are stripped away, causing higher operating costs.¹

As frightening as those statistics are, the NLRB is not the only agency trying to expand joint employer liability over more small businesses. On January 20, the Wage and Hour Division (WHD) released a 16-page administrative interpretation (AI) on joint employment, and it seems to provide an even broader interpretation of joint employment under the Fair Labor Standards Act than even the NLRB’s definition in its *Browning-Ferris* decision.

In addition to the joint employer concerns, many local business owners are nervous about their future access to capital and the implications of joint employer on other agencies. The members of this Subcommittee well know that the Small Business Administration’s loan guarantee program is critical to the creation and growth of small businesses, as it was to SOLDIERFIT. Our business award came from the SBA, and our first franchisee secured his initial loan from SBA as well. So I want to emphasize how important it is that the SBA implement changes to the loan approval process that streamline and facilitate franchise businesses’ access to these loans. But, any changes to the standards cannot be viewed in a vacuum. It is important to consider these changes in light of other federal government agencies revisions to the definition of a joint employer and the increased scrutiny on franchise businesses to ensure there are no unintended consequences that would reduce access to capital.

The worst case would be if the SBA streamlining proposal were to be hijacked by the anti-franchise-model forces in other agencies. If the SBA regulation meant to accelerate small

¹ Crews, A. et al. FRANdata Key Findings and Survey Results: 2015 National Labor Relations Board Joint-Employer Ruling (2015). FRANdata.

businesses access to capital becomes instead a hammer wielded by zealots in other agencies determined to crush the franchise model, they would view the destruction as inconvenient but necessary collateral damage, but it would be a disaster for small business owners.

Why are our local, small businesses being unfairly targeted by numerous federal agencies? Why don't we have a government that supports small business, rather than making it immeasurably more difficult to create jobs and serve our communities? I don't see or experience the so-called "cracks" in our model that some officials here in Washington claim to be trying to repair. From where I sit, small business like mine still employ 50-60 percent of the workforce and demonstrate immeasurable support for every community in America. We are proving that small business will continue to chart the course for success in this country. Mr. Chairman, one of the most important lessons I can share from my life experiences is this: When we refuse to fight, our failure is assured. I've seen what can happen when we refuse to stand up and fight for ourselves. That's why I'm here today. To fight for my dream and the dreams of thousands of small business owners throughout the United States who are truly confused about why our government is implementing regulations that will assuredly chip away at our American Dream. Our Coalition is looking for members of Congress to stand up with us.

CLOSING

Mr. Chairman, I hope that through my story and the testimony of my fellow witnesses, you will gain a deeper understanding of the very long roads many of us have walked before realizing the dreams we are living today, and the reasons why our coalition of Main Street small businesses is asking Congress for help.

The bottom line, Mr. Chairman, is this – no one can assure me that my business – or anyone else's business – may not run afoul of the NLRB's vague joint employer liability standard based on "indirect" and even unexercised, "reserved" control. That's why I and so many small business owners around the country are asking for Congress to fight for locally owned businesses like mine, and exercise its Article I power to provide a check on an overreach by a federal agency like the NLRB's joint employer activism.

Mr. Chairman, thank you for your leadership on this issue, and thank you again for allowing me the honor of addressing you today. I would be happy to answer any questions you have. God bless.