



COALITION TO SAVE LOCAL BUSINESSES

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NEW ORLEANS, LOUISIANA**

**TESTIMONY BEFORE THE
U.S. HOUSE EDUCATION AND THE WORKFORCE COMMITTEE**

**HEARING ON “REDEFINING JOINT EMPLOYER STANDARDS:
BARRIERS TO JOB CREATION AND ENTREPRENEURSHIP”**

JULY 12, 2017

Good morning Chairwoman Foxx, Ranking Member Scott, and distinguished members of the Committee. My name is Jerry Reese, and I am the Director of Franchise Development for the New Orleans-based Dat Dog Franchise. I am truly honored to be here today and want to thank you for your invitation. I am grateful to the Committee for taking an interest in the variety of regulatory issues impacting local businesses throughout the nation, most specifically today's topic of "joint employer."

I am here today to speak on behalf of the Coalition to Save Local Businesses, which consists of thousands of small businesses throughout the United States that are truly confused and impeded by the inconsistent, expanding joint employer standard that has come out of Washington, D.C. We are a diverse group of locally owned, independent small businesses, associations and organizations seeking fairness and clarity on the new rules of the unlimited joint employer liability doctrine.

Simply put, the question of when an employer should be held liable as a joint-employer is an unsettled question of law, and Congress should settle it. That is why our Coalition is calling upon Congress to return to the very successful, traditional joint employer standard that helped businesses grow and succeed for decades. Your actions on this matter will surely help restore certainty to small businesses and American workers.

Thank you, again, for the opportunity to tell you more about Dat Dog, our passion for contributing to our communities through a variety of charitable activities, and why we believe the joint employer issue before us today is worthy of congressional consideration.

ABOUT DAT DOG

Dat Dog is the kind of neighborhood establishment that simply aims to put a smile on our guests' faces, and we've been pretty successful in our efforts. Our lighthearted and wholesome environment reminds visitors of a fun afternoon at the ballpark, a picnic with family and friends, or a perfectly warm summer day on the beach.

Founded by a fellow son of New Orleans, Constantine Georges, the first Dat Dog opened on Feb. 14, 2011 in a 475-square-foot shack in a post-Hurricane Katrina neighborhood. Together with Executive Chef Alex Ventura and Beverage Director Alexa Ballard, Constantine built a one-of-a-kind New Orleans-style restaurant known for its quirky hot dog combinations, with sausages made from crawfish, alligator, and duck, in addition to traditional beef and vegetarian and vegan options. We feature more than 30 toppings, including unconventional options like blackberry sauce, guacamole and crawfish etouffee.

Dat Dog, however, is so much more than its food and drink offerings. Constantine's vision has quickly grown and evolved from a tiny hot dog stand into an honest-to-goodness community center, where we strive to keep putting a smile on the faces of our neighbors by inviting them in for art markets, trivia nights, charitable events and fundraisers, Mardi Gras krewe parties, and many other special events that benefit the community.

As with many locally owned businesses, philanthropic giving and social good are built into Dat Dog's DNA. We regularly host fundraising events on- and off-site for causes of all kinds, including organizations related to animal welfare, at-risk youth, and education. Dat Dog doesn't just write checks; we engage in our community to make a difference by doing something that matters.

Perhaps our greatest contribution as a local business is our involvement with the Son of a Saint organization, which helps better the lives of young boys who have become fatherless due to their father's incarceration, death or abandonment. My colleagues at Dat Dog and I have spent countless hours doing everything with bringing food to fundraising events to teaching these fatherless boys how to fish, play chess, and even shave.

In addition to our community outreach, we also invite organizations to use our facilities as their own home base. For example, the recently dedicated Krewe of Freret Courtyard at one of our Dat Dog locations has emerged as the official meeting space for the local Carnival organization, which supports local industry, conducts service events that

benefit the city at large, and aims to preserve the longevity of the Mardi Gras tradition. And during the holidays, Dat Dog offers free hot dogs to anyone who drops off toys at our local Children's Hospital, in addition to other outreach we conduct in the community to help families in need have a memorable holiday. These are just a few of the ways that we give back, and we are always striving to do more.

From the very beginning, Constantine's community-focused business concept inspired me. I worked hard and rose through the ranks at Dat Dog, starting as a part-time employee while I earned a bachelor's degree in Journalism and Political Science at Loyola University. I joined the corporate office after graduation, and I started the franchising division in December 2016. Within its first 6 months, our newly introduced franchise brand has produced 28 potential units, and only powers outside our control would prevent our continued growth.

IMPACT OF EXPANDED JOINT EMPLOYER STANDARD

As Dat Dog's business flourished, our next logical step was to provide franchise opportunities to other enthusiasts. Today, I am Dat Dog's one-man franchising band, but we are hopeful that I will be able to expand our franchise team with new hires soon. Implementing our expansion plan will certainly depend on Congress's willingness to help address regulatory obstacles that make the future growth of small businesses, like ours, uncertain.

At Dat Dog, we provide our franchisees a certain level of independence with which they can operate their business, allowing them to offer flexible concepts for their restaurants, like indoor/outdoor dining, areas for live music, beer gardens or art markets. Through our brand's proven record of success in its neighborhoods, we decided that the best way to grow was to offer our brand to franchise owners who, like us, have a personal stake in their own communities, while making sure that there was enough wiggle room for them to have fun. We didn't want to drop a corporate restaurant in a faraway place like Washington, D.C., for example; we wanted to ensure that we were selecting owners who also believe that we are more than a restaurant, but rather a well-functioning community

partner. Furthermore, we want those owners to have the freedom to hire good workers and present an atmosphere that makes visitors happy.

Through our franchise program, we are on track to add 28 stores this year to our existing four corporate locations, with a fifth corporate location opening this summer. Our existing 145-person employee team will grow exponentially, with hiring and training increasing in full force. And we aren't stopping there. We have plans to further expand in the Gulf South region, focusing on Louisiana, Texas, Mississippi, Alabama, Tennessee and the Florida panhandle. But as with any business that is fortunate enough to grow, we now face new risks. Joint employer is the most prominent risk on our minds.

For three decades, the "direct" and "immediate" control joint employer standard provided clarity about small business's legal obligations and fairness for businesses of all sizes. But the NLRB's 2015 *Browning-Ferris* decision invented a new definition of joint employer, that is, any business that has direct, "indirect" or even "reserved" yet unexercised control. The policy is so broad and unpredictable; nearly any business could run afoul of such unlimited joint employer liability.

The most important part of our business's success rests in the hands of our wonderful and competent people. They are the faces of our restaurants at each location, and we rely on them each day. Of course, all our current restaurants are corporate-owned and we hire our own employees. As we begin to franchise, however, the most important aspect of my position as the director of franchise development is in training future franchise owners, so that they can hire their own wonderful and competent employees.

But employee training is a great example of the confusion that lies within the very real threat to local businesses from a joint employer standard based on direct, indirect and reserved control. Franchise companies naturally want to pass along their expertise and experience to as many people as possible within their system. But now franchise brands are limited by only being able to train franchise employees if the training is deemed necessary to ensuring brand standards. While no business can afford to have a poorly

trained work force, locally owned businesses are now faced with the question of how to train employees in your system to uphold brand standards with the all-too-real threat of joint employment liability looming over all of us.

Madam Chair, thanks to the mess created by the National Labor Relations Board, franchising is caught in an unworkable Catch-22. On one hand, franchisors must impose a series of operational standards upon franchisees to maintain brand standards and consistency. But on the other hand, these fundamental operational standards have served as the basis for regulators to name franchisors as joint employers of their franchisees' employees.

Increased joint employer liability comes at a high legal and operational cost to both large and small businesses alike. But make no mistake about it: this policy disproportionately affects small businesses. Big corporations have the resources, the attorneys, and the economies of scale to adapt to joint employer. If they're slapped with a joint employer claim, they can better afford to defend themselves and weather the storm. It's the small employers like Dat Dog that may run out of resources before we even get started.

The spirit of franchising – that we're in business for ourselves but not by ourselves – may not survive this misguided policy. This policy pits the little guy against the big. We can no longer be in this together; it's every entity for itself. That's not the dream on which America was built.

I believe – or at least, I hope – that this new joint employer policy was never intended to affect franchising in the way that it has. But I am certain that Congress has the tools at its disposal to resolve this small business problem and provide all of us some certainty for the future.

What probably hurts the most is that, while businesses like ours are doing our best to navigate confusing joint employer law today, none of us can figure out who benefits from

unlimited joint employer liability. Whom among your constituents is better off because of joint employer? Who is calling for this policy? But meanwhile, all local businesses are frustrated and simply hoping we don't end up with serious joint employer harm like Commercial Interiors, DirecTV, Green JobWorks, Amazon, Microsoft, and so many others.

For decades, the American economy grew four or five percent each year – or more. But from 2011-2016, real U.S. Gross Domestic Product increased by only 1.6, 2.2, 1.5, 2.4, 2.4 and 1.6 percent each respective year, according to World Bank data. For the sake of our citizens, we can get back to the four percent growth America enjoyed as recently as the 1980s and 1990s, and removing the cloud of joint employer over local job creators would be a great step toward doing so.

CLOSING

Our coalition of local businesses needs Congress to enact legislation that clears up the basic question of what is an employer. Every Member here today should think about what they can do to help small businesses in your communities – the little guys like Dat Dog – and what efforts will have an immediate impact. I know that no one in this room wants to make it harder for businesses to grow and create jobs, provide livelihoods to our employees and serve our neighbors.

Along with thousands of franchise colleagues and members of the Coalition to Save Local Businesses, I ask you all to support us as we make clear our concerns. We believe in the franchise business model – and so many other business models that feature construction companies, manufacturers, retailers and service providers. We hope we'll continue to have your support.

I am proud to represent this great company and we are eager to bring a little slice of my hometown to other U.S. locations. I truly believe that, together, we can ensure that Dat Dog – and every business that shares a similar mission – continues to thrive in its efforts to contribute some of its signature “happiness” to communities beyond New Orleans.

Chairwoman Foxx, thank you for your leadership on behalf of local businesses around the country, and thank you again for allowing me the honor of addressing you today. Please help us continue to grow and serve our communities. I would be happy to answer any questions that you and your colleagues have.