



# **COALITION TO SAVE LOCAL BUSINESSES**

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**TESTIMONY BEFORE THE SUBCOMMITTEES ON  
WORKFORCE PROTECTIONS AND HEALTH, EMPLOYMENT,  
LABOR, AND PENSIONS**

**HEARING ON  
H.R. 3441, THE "SAVE LOCAL BUSINESS ACT"**

**SEPTEMBER 13, 2017**

Good morning Chairman Byrne, Chairman Walberg, Ranking Member Takano, Ranking Member Sablan, and distinguished members of the subcommittees, my name is Tamra Kennedy. I am the President of Twin City Taco John's, a multi-unit franchise business based in Minnesota. I am honored to be here today to speak on behalf of small businesses throughout the nation, and I want to thank you for your invitation. I am grateful to the Committee members for their action on the "joint employer" issue and look forward to an important discussion today on the merits of the "Save Local Business Act."

Today I am representing the Coalition to Save Local Businesses and its diverse group of thousands of locally-owned, independent small businesses, including manufacturers, retailers, restaurants, hotels, construction companies, and homebuilders like Mr. MacDonald.

Mr. Chairman, I am the 25<sup>th</sup> local business owner and 15<sup>th</sup> franchisee to testify before the U.S. Senate or House asking for clarity on joint employer liability over the past two years. Whatever the ideological goals were for the regulators who originally pushed to create a new standard two years ago, my business has become collateral damage in the confusing quagmire of unlimited joint employment liability. And so are the thousands of other small business owners who are members of our diverse coalition. I am here on their behalf to encourage this Congress to support and commit to swift passage of the Save Local Business Act.

My road to business ownership is similar to that of so many American entrepreneurs before me. I got my start as an employee of a local Taco John's franchise, working as a secretary for the franchisee. From there, I worked my way up doing administrative work, and I began exploring the operations side on my own time so I would have experience and first-hand knowledge of that part of the business. You could say that I started plotting out my strategy early on to someday become a franchise owner. All of my hard work as an employee paid off, and in 1999, when my employer retired, I bought the business.

Today, my organization operates nine locations, with eight in a seven-county area surrounding the Twin Cities and one in central Iowa. Because of strategic decisions made early on, our business has achieved tremendous success and has the potential for continued growth, should the regulatory environment allow us the certainty and flexibility to do so.

I am wholly invested in the success story that is franchising. As a Board member of the International Franchise Association, I am very involved in protecting our life's work and ensuring that this industry, that has provided so much to me, can continue to do the same for every rising entrepreneur. For example, as I am doing here this week, every September, I am honored to join other leaders in our industry here in Washington, D.C., to meet with our elected representatives and highlight for them the various issues that impact small business owners in Minnesota, Iowa and throughout the nation.

Working closely within the collective industry, I have learned that I am not alone in my success. 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 hard-working 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. My company's values really are about giving people an opportunity to earn a living, to contribute to their families, and be proud of how they are earning and learning at the same time. Our team works side-by-side to feed our neighbors – we get to know their families while they get to know our Taco John's family. Our team is fortunate to be able to contribute to our community, volunteering with the Twin Cities Women's Business Network, Muscular Dystrophy Association, Second Harvest Heartland, and Toys for Tots. We're part of that fabric that makes this country great, and it is an honor to do what we do.

I am here today to encourage this Committee and this Congress to act on the legislative solution to address the joint employer problem that is pending before the subcommittees today. It is not only the business owners and operators who are struggling with the repercussions of this puzzling new regulation, but our employees and potential employees, as well. I know because I was one of them and I can see, firsthand, how the burdensome regulations have made it harder for individuals to succeed.

After two years operating under the expanded joint employer standard, the impact on my business is clear: joint employer means I must pay more to run my business, and earn less in return, all while worrying if the unclear joint employment liability rules will continue to erode my autonomy to run my business. Let me explain.

It is relevant for me to note at the outset how much I love my brand company. I chose to own and operate Taco John's restaurants because of its products and its people, and I am pleased everyday with that decision. But franchisors and other primary contractors have been compelled to respond to the liability risk of a new joint employer standard that the National Labor Relations Board (NLRB) based on "direct," "indirect," and even "reserved and unexercised" control.

Joint employer has negatively affected my business in several ways. First, my franchisor used to provide standard employee handbooks to its franchisees. But due to expanded joint employment liability, the company no longer provides me employee handbooks – even though my brand has the expertise and best practices that would be most helpful for me and my employees. Now, I must hire an outside attorney to write an employee handbook for me. It cost my business \$9,000 to have outside counsel prepare my employee handbook. Not to mention, I need my attorneys to update my handbook each time the law changes. All told, I need to sell hundreds of extra tacos every day to cover this needless expense.

Second, I no longer receive a job application form from my franchisor. I must create my own application now, and keep it updated as events warrant. We are currently determining how much that will cost, but that's another recurring cost for which the new joint employer doctrine is responsible.

A third example is that joint employment liability means I must recruit employees on my own. For years, our brand company has produced and provided its franchise owners employee recruiting kits that included banners, brochures, fliers and even an employment application form for use in our restaurants. All of the materials were created by the brand and presented a unified, consistent quality to our potential employees. Today, because of the fear of joint employment liability, these essential recruitment tools are no longer available to

franchisees. While we are welcome to produce our own materials – both incurring the cost of design and printing – we can no longer expect this support from our brand company. It also creates another barrier to hiring great people, so unfortunately, I'm creating jobs in my community slower than I otherwise would.

Finally, and most importantly, joint employer is impacting our ability to recruit and retain quality entry-level employees. Due in part to how I grew professionally within the fast-food restaurant industry, this is the area that causes me the most distress. Any quality business owner will tell you that our businesses are only as good as our employees; quite simply, we want and need employees to consider our business when they are searching for a job. Statistics continue to show that we have fewer people joining the workforce, increased competition for those entry-level positions, and critically high marketing and advertising costs to recruit. As I mentioned earlier in my testimony, it could not be more important today to have the recruiting tools and support once provided by our brand company.

All of these costs quickly add up. I signed up to run my restaurants with the expectation that I would enjoy the myriad benefits of the franchise business format. Now I'm paying more to run my business and getting a whole lot less, because unelected regulators created a vague, harmful joint employer standard that has discouraged many primary companies and franchisors from providing resources or passing along any expertise related to employment.

I am one business owner, but these are examples of how the expanded joint employer standard has harmed the franchisee-franchisor relationship for thousands of other entrepreneurs. As a franchisee, I purchased and continue to pay for a "brand system" that agreed to provide support and used to include these important recruiting tools. Because of the expanded joint employer standard, we can no longer trust that our brand will support us as we build our local business. While we continue to pay the same franchise fees, we no longer have access to all the benefits that were once an important part of the business model. Franchisees are understandably feeling under serviced, or frankly, cheated, which can and will erode the partnership that was formed through the franchise agreement.

To reiterate, I am very happy with the Taco John's brand. While it is upsetting to have to undertake more duties like these on top of our existing responsibilities to our business and employees, I cannot blame our corporate team when I know what is at stake for everyone. Our brand company is watching other brands come under attack for "involvement in the hiring process," which critics believe indicates a "direct relationship with the employee." Those of us running our businesses know that this is simply not the case. My view and my brand's view of joint employer has always been mutually understood: my employees are my employees alone, and the role of the brand is to support my business with tools such as recruitment materials. But in its August 2015 decision to expand joint employer, the NLRB removed that clear understanding from our business relationship, and now our industry is justifiably struggling with the new legal landscape.

But my biggest fear of this issue is that I may lose what I have worked for – my autonomy – and ultimately find myself, once again, an employee of my franchisor. If broad joint employment liability means franchisors can be potentially liable for franchise employees they do not even employ, then they may be compelled to exercise more control over their franchisees. Consequently, I may lose my freedom to make decisions for my own business, and eventually, my

entire business. While I am paying more and getting less today, I also worry for my livelihood in the future – as do thousands of other business owners.

Subcommittee members – like me, you are all small employers. You have the right to hire and fire whom you choose in your congressional offices. And none of you would want your parent company – in your case, the Federal government – telling you who to hire and fire. But unlimited joint employment liability means my right to run my own business could be taken away from me. I hope this Committee will protect my business, and the livelihoods of thousands of other local business owners.

You see, local businesses are not afraid of complying with the law. We are simply concerned about the needless costs and the threat to our livelihoods that joint employer has caused.

Mr. Chairman, when you've worked your way up from the bottom like I have, you don't like to see anyone knock you back down. It's time we clear up the confusion of joint employer for local business owners and all of those depending on us, and I am confident that the Save Local Business Act does just that. I urge you and your colleagues to support this bill.

Thank you.