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**TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON HEALTH,  
EDUCATION, LABOR AND PENSIONS**

**HEARING ON “THE RIGHT TO ORGANIZE: EMPOWERING AMERICAN  
WORKERS IN A 21<sup>ST</sup> CENTURY ECONOMY”**

**JULY 22, 2021**

Good morning Chairman Murray, Ranking Member Burr, and distinguished members of the Committee. My name is Jyoti Sarolia, and I am a Principal at Ellis Hospitality that owns and operates seven hotel properties in California. Our small business is named after New York City's Ellis Island, through which my family members entered America to pursue a better life. Thank you very much for the invitation to appear before this Committee to share my story of small business ownership and discuss the views of local business owners everywhere as it relates to empowering American workers in today's hearing. I will focus my comments on the *Protecting the Right to Organize Act*, or "PRO Act." This is an issue of great importance to franchise business owners like me, and it is important that small business perspectives are heard by our nation's leaders.

I appear before you on behalf of the International Franchise Association. IFA is the world's oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education and advocacy, IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising. IFA members include franchise companies in over 300 different business format categories, individual franchisees, and companies that support the industry in marketing, law and business development.

With both respect and candor, let me say this: the PRO Act is the most anti-small business bill in the history of Congress. With the stroke of a pen upon enactment, the PRO Act's joint employer and independent contractor provisions alone would steal the American Dream of business ownership from countless entrepreneurs.

There is a false notion that only businesses that have representation cases before the National Labor Relations Board are concerned about the PRO Act. This couldn't be further from the truth. Put simply, businesses do not react in a vacuum. If the PRO Act becomes law, franchise brands will react by offering fewer franchises, and as a result, people like me will be collateral damage. Senators, you cannot let this happen. Upending an entire business model and taking away business opportunities to people like me, just to increase union power, is unacceptable. There simply must be a better way to achieve the goals of the legislation.

In my testimony, I will describe my small business story, share how my business serves its employees and local communities, reveal how hotels and other small businesses are recovering from the COVID-19 pandemic, and show why the PRO Act needlessly threatens every small business during the economic recovery.

### **My small business story**

My granduncles came to this country to achieve the American Dream. My grandfather, who was the eldest of the siblings, was not as educated as his brothers and decided to continue farming and stay behind. His two brothers, Dhayabhai and Santibhai, whom I call grandparents, along with four other friends in the area, decided to come to America. They had someone from their hometown who was already running a hotel in San Francisco to host them when they arrived.

One can only imagine what life was like for my family, as they took three months to finally dock at Ellis Island. They were detained as their health checks cleared and continued their journey via train to get to San Francisco. They then met their host and saw the life they could live while operating a hotel. From 1952 to 1957, both of my grandparents worked various jobs until they were able to save enough money to lease their first hotel, the Alder. Shortly after, their wives immigrated to help with the business. This hotel still remains in my extended family. Our hotel sign has also been displayed at the Smithsonian for almost two years.

My parents then immigrated to the U.S. in 1967. In order for the family to grow their business, they called upon other family members to also join them in the business so they too could live their American Dream. My parents got to work right away, cleaning rooms and doing light maintenance.

Having lived in the Alder Hotel owned by my extended family in downtown San Francisco until the age of 11, I learned first-hand many of the responsibilities that were involved in running and operating a successful hotel. I grew up learning the importance of hard work, gaining skills in carpet laying and fixing household appliances, like water heaters and toilets. I also later handled front-desk management, housekeeping, and so many other responsibilities. My father took on the responsibility of the more labor-intensive jobs, including home renovating, painting, and supply management. Together, we all pitched in to keep the business alive and our customers happy.

Today, hospitality still runs in my blood. I bought my first hotel in 1996, and we now have seven properties and I oversee all aspects of operations. My focus is to work with my leadership and provide continued excellent service to our visitors and customers. Our mission begins with our employees, ensuring they are our priority so we can provide excellent service and care for our guests. This employee-first mentality has proven to be the key to our success through the years, and it remains my focus even now. Our mantra is, "How can we better serve you?" This is the conversation that permeates our service environment.

Community service is also a major priority of mine. Active engagement with our local communities and business partners is essential to advancing our journey together. With this in mind, I've served on multiple boards, such as the Asian American Culture Society of San Diego and the Choice Hotels Owners Council (CHOC). I also proudly served as the first female Chair of the Franchise Advisory Council in 2018.

As a franchise business owner, I have worked so hard to provide for my family, employees, customers and stakeholders in my community. But along the way, franchising has afforded me every opportunity to succeed, no matter where I came from, my background, my gender, color of my skin, or any other personal characteristic. It is a business format every policymaker should support.

### **Background on the franchise business format**

Franchising is perhaps the most important business growth strategy in American history. Today, there are more than 740,000 franchise establishments, which support nearly 7.6 million jobs and \$674.3 billion of economic output for the U.S. economy.<sup>1</sup> "Franchising is a method of marketing goods and services" that depends upon the existence of the franchisor's control over a trademark, other intellectual property or some other commercially desirable interest sufficient to induce franchisees to participate in the franchisor's system by distributing goods or services under the franchisor's name.<sup>2</sup>

Franchising democratizes business ownership for people of all backgrounds. There is a higher minority ownership rate among franchised businesses than in nonfranchised businesses: 30.8 percent of franchises were owned by minorities, compared to 18.8 percent of nonfranchised

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<sup>1</sup> Franchiseeconomy.com (2021).

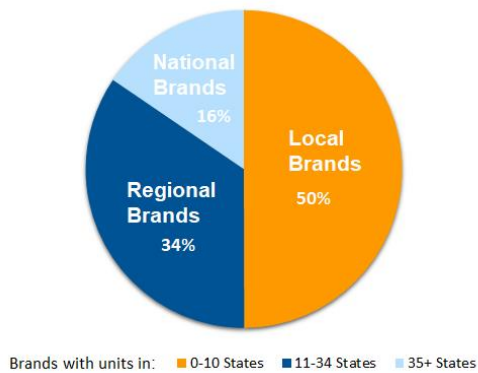
<sup>2</sup> Joseph H. King, Jr., Limiting the Vicarious Liability of Franchisors for the Torts of Their Franchisees, 62 Wash. & Lee L. Rev. 417, 420-21 (2005).

businesses. Asians, Blacks, Hispanics, and “other” minorities had a higher rate of ownership of franchises than nonfranchised businesses in 2012, while American Indians and Pacific Islanders had roughly the same ownership rates among franchised and nonfranchised businesses. Asians owned 11.8 percent of all franchises, compared to 6.3 percent of nonfranchised businesses. Hispanics owned 10.4 percent of all franchised businesses, compared to 7.2 percent of nonfranchised businesses. Blacks owned 8.0 percent of all franchised businesses compared to 4.7 percent of nonfranchised businesses.<sup>3</sup>

Despite how it is often characterized, franchising is not an industry. Franchising is a business growth model used *within* nearly every industry. More than 230 different sectors that are represented in franchising, and franchise brand companies offer a huge range of services from lodging to fitness, home services to health care, plumbing, pest control, security, and lawn care.

Furthermore, notwithstanding any popular misapprehensions, franchising consists of far more than merely the “fast food” industry. As you can see in the graphic below, there are far more local (50% of all franchised brands) and regional brands (34% of all franchised brands) whose names you might not recognize than the fast food giants that garner the most attention. In fact, 63% of companies that franchise are not in the food services at all, and 83% are not in fast food.<sup>4</sup>

**Geographic Distribution of Brands**



There are two principal explanations given for the popularity of franchising as a method of distribution. One is that it “was developed in response to the massive amounts of capital required to establish and operate a national or international network of uniform product or service vendors, as demanded by an increasingly mobile consuming public.”<sup>5</sup> The other is that “franchising is usually undertaken in situations where the franchisee is physically removed from the franchisor, and thus where monitoring of the performance and behavior of the franchisee would be difficult.”<sup>6</sup> These two motivations are consistent with a business model in which the licensing and protection of the trademark rests with the franchisor and the capital investment and direct management of day-to-

<sup>3</sup> Franchised Business Ownership by Minority and Gender Groups. IFA Foundation (2018).

<sup>4</sup> FRANdata research. (2021).

<sup>5</sup> Kevin M. Shelley & Susan H. Morton, “Control” in Franchising and the Common Law, 19 Fran. L. J. 119, 121 (1999-2000)

<sup>6</sup> Paul H. Rubin, The Theory of the Firm and the Structure of the Franchise Contract, 21 J. Law & Econ. 223, 226 (1978).

day operations of the retail outlets are the responsibility of the franchisee, which owns, and receives the net profits from, its individually-owned franchise unit.

It is typical in franchising that a franchisor will license, among other things, the use of its name, its products or services, and its reputation to its franchisees. Consequently, it is commonplace for a franchisor to impose standards on its franchisees, necessary under the federal Lanham (Trademark) Act to protect the consumer. Such standards are essential for a franchisor that seeks to ensure socially desirable and economically beneficial oversight of operations throughout its network. These standards allow franchisors to maintain the uniformity and quality of product and service offerings and, in doing so, to protect their trade names, trademarks and service marks (collectively the “Marks”), the goodwill associated with those Marks, and most importantly, the protection of the consumer. Because the essence of franchising is the collective use by franchisees and franchisors of Marks that represent the source and quality of their goods and services to the consuming public, action taken to control the uniformity and quality of product and service offerings under those Marks is not merely an essential element of franchising, it is an explicit requirement of federal trademark law, which is discussed further in the section below titled “Franchising already ‘heavily regulated.’”

### **The state of the small business economic recovery**

The COVID-19 pandemic battered small businesses in historic ways. By August 2020, within the first six months of the COVID-19 outbreak, an estimated 32,700 franchised businesses had closed; 21,834 businesses were temporarily closed, while 10,875 businesses were permanently closed.

While the pandemic affected nearly all small businesses, the SBA noted industry and demographic differences in the impact of the pandemic on business owners. Among demographic categories, there were larger declines for Asian and Black business owners. The total number of people who were self-employed and working declined by 20.2 percent between April 2019 and April 2020. The Hispanic group experienced a higher decline, at 26.0 percent. The highest declines were experienced by the Asian and Black groups, with a decline of 37.1 percent for the Asian group and 37.6 percent for the Black group. Meanwhile, leisure and hospitality had the largest decrease in employment, at 48 percent, and had the third largest small business share, at 61 percent.<sup>7</sup>

Franchise business owners have been grateful to policymakers for the federal response. Congress provided \$525 billion in emergency funds extended through the Paycheck Protection Program and \$194 billion through the Economic Injury Disaster Loan program to help businesses in need.

By the end of this year, franchising will have recovered to nearly 2019 levels in most metrics, including business growth and gross domestic production. In 2021, 26,000 new franchise businesses will open and 800,000 new jobs will be added by new franchise businesses. 8.3 million people will be employed by new franchise businesses by the end of this year.<sup>8</sup>

The hotel industry has been uniquely negatively affected by COVID-19. According to the American Hotel and Lodging Association’s July 2021 analysis, the pandemic erased ten years of hotel job growth.<sup>9</sup> The pandemic also devastated the hospitality industry workforce. For every 10 people

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<sup>7</sup> Daniel Wilmoth, The Effects of the COVID-19 Pandemic on Small Businesses. U.S. Small Business Administration (2021).

<sup>8</sup> Franchiseeconomy.com (2021).

<sup>9</sup> Economic Impact of the US Hotel Industry. Oxford Economics (2021).

directly employed on a hotel property, hotels support an additional 26 jobs in the community, according to a study by Oxford Economics. With hotels expected to end 2021 down nearly 500,000 jobs, based on the pre-pandemic ratio, an additional 1.3 million hotel-supported jobs are in jeopardy this year without additional support from Congress.<sup>10</sup>

Leisure travel is starting to return, but the hotel industry's road to recovery is long and uneven, with urban markets disproportionately impacted. Projections have improved since January with the uptick in leisure travel, but the industry remains well below pre-pandemic levels. As of May of this year, twenty-one of the top 25 U.S. hotel markets remaining in a depression or recession. Urban hotels were still in a "depression" cycle while the overall U.S. hotel industry remained in a "recession." Urban markets, which rely heavily on business from events and group meetings, continue to face a severe financial crisis as they have been disproportionately impacted by the pandemic. Urban hotels were down 52% in room revenue in May 2021 compared to May 2019.<sup>11</sup>

Despite all of these economic headwinds, and if Congress does no harm, franchise businesses in all sectors will surely accelerate the post-COVID economic recovery. While the number of unemployed individuals peaked at nearly 30 million workers early in the pandemic, such workforce dislocation forced many individuals to try entrepreneurial ventures, including starting new franchise businesses, which will likely result in the economic growth cited above. This outsized growth should be expected because franchising has helped fuel recovery following past economic downturns. After the financial crisis from 2009-2012, employment in the franchise sector grew 7.4%, versus 1.8% growth in total U.S. employment.<sup>12</sup>

Now the biggest questions facing franchise small businesses like mine during the economic recovery are legislative and regulatory risk. There is no more significant and avoidable threat to small business job creators than the PRO Act.

### **The extremist PRO Act**

The PRO Act is perhaps the most anti-small business bill ever introduced in Congress. There must be a better way to advance worker rights in an evenhanded way. Instead, on the backend of a global pandemic that had a disproportionately negative impact on Main Street businesses, business owners are facing this bill. It is incredibly disheartening to small business owners that this legislation has already passed the U.S. House of Representatives and is cosponsored by 47 U.S. senators.

The PRO Act puts the very existence of franchise businesses in jeopardy. The PRO Act cobbles together more than 50 imbalanced amendments to the National Labor Relations Act which are designed to tip the scales against small businesses. Two provisions are exponentially worse than the rest for franchising — an industry that empowers new entrepreneurs to operate under a national brand, letting small businesses and national companies grow faster and contribute more to local communities and the wider economy. The enormous risk associated with the PRO Act will serve only to corporatize the franchise model, encouraging brands to grow through franchisor-owned outlets, while shying away from offering ownership opportunities to new entrepreneurs.

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> FRANdata research (2021).

First, the bill would enshrine in federal law a boundless “joint employer” standard, making franchise brands responsible for actions taken by small businesses at the unit level. This puts franchisors at risk of being sued for things they never did and had no power to stop.

Faced with the PRO Act’s new liability regime, franchise companies are much less likely to partner with local entrepreneurs, which means small business ownership opportunities will dry up on Main Street. The joint employer standard created by the National Labor Relations Board in 2015 led to a nearly doubling of litigation against franchise businesses, cost franchising \$33 billion per year, and preventing the creation of 376,000 new jobs in the four ensuing years. While the NLRB eventually restored the traditional, clear joint employer standard in 2019, the PRO Act would reverse course, make that harmful standard permanent, and result in lower job creation and small-business formation.

The bill’s second provision directly impacting franchising is perhaps worse. It would institute a three-part, so-called “ABC test” to determine when individuals can be classified as independent contractors. The purpose is to classify more workers as direct employees, thereby making them easier to unionize. The PRO Act’s ABC test language is so broad that it would likely define franchisees as employees of their brand, instead of the independent small business owners that they really are. This would eliminate the distinction at the heart of franchising — and the opportunities and incentives within the business model.

As one consequence, these changes would mean hiring numerous attorneys at the franchisor level to oversee employment issues and claims over which the franchisor has no control. Ultimately, the additional costs to the franchisor would translate into additional cost to independent owners like me, that would make the franchise business model untenable. These changes would take away the equity and independence of franchise small business owners and would put their success and livelihoods, including mine, in jeopardy.

Ironically, these changes would encourage concentration of business into one big corporation at the franchisor level. As franchise contracts come up for renewal, franchise brands will be encouraged to convert locations into corporate locations. Rather than assume the risk, they will grow using a corporate model instead.

Without a doubt, these seismic shifts in employment policy would hurt small businesses and provide fewer opportunities, particularly for women and People of Color. Growing a business through the corporate model does not provide ownership or wealth building opportunities. We need policy and regulatory changes that will drive wealth creation and new ownership opportunities for the most underserved communities, not hinder it.

Due in large part to its treatment of franchise small businesses, the PRO Act puts the national economic recovery at risk. As written, the PRO Act would harm current franchise owners through a potential massive expropriation of equity. It would harm potential franchise owners through a limiting of economic opportunities available to them. It would harm franchise employees through a sudden change of their places of work away from their communities and into a large corporation. Finally, it would harm franchise brands by upending the business model that they use to grow and expand in communities across the U.S.

## California experience

In my home state of California, small business owners are constantly facing new public policy threats to how we operate.

One of the most invasive laws passed in California has been Assembly Bill 5, or A.B. 5, which became effective in January 2020. The law established California's "ABC test" for independent contractor status. The upshot of A.B. 5 is that it classified nearly all wage-earning workers as employees, and severely affected thousands of independent contractors that operated in the state.

IFA and several other parties are challenging in court the California ABC test's application to franchisors and franchisees. IFA is arguing the test is preempted by the FTC Franchise Rule and the Lanham Act, imposes excessive burdens in violation of the Commerce Clause of the U.S. Constitution, and violates the Fifth and Fourteenth Amendments.

Relevant to the PRO Act, the IFA lawsuit argues that California's ABC test is irreconcilable with the federal laws that regulate franchising. Under Prong A of the A.B. 5 test, a person may not be classified as an independent contractor unless that person is "free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact." Moreover, under Prong B, a person may not be classified as an independent contractor unless that person "performs work that is outside the usual course of the hiring entity's business."<sup>13</sup> In the context of a franchise relationship, under California law, the operation of a franchisee's business must be "under a marketing plan or system prescribed in substantial part by the franchisor," and "substantially associated with the franchisor's trademark." Without meeting these requirements of the California Franchise Investment Law, a franchise brand's registration with the state would be rejected, but by meeting them, they run the very real risk of running afoul of the rigid ABC test under A.B. 5. This dissonance between the ABC test and the franchise business model was emphasized by the United States District Court for the District of Massachusetts in the case of *Patel v. 7-Eleven, Inc.*

A.B. 5 itself recognized that it created an unworkable framework for workers in many industries, as the law as amended currently includes over 100 exemptions for categories of workers. These include licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.<sup>14</sup>

Since A.B. 5 became law, several other industry groups have fought for exemptions to the law. App-based transportation and delivery companies prevailed in a ballot initiative called **Proposition 22** in November 2020 passed with 59% of the vote and restored app-based transportation and delivery companies as independent contractors under California labor law. Numerous lawsuits challenging A.B. 5, in sectors ranging from journalism to trucking, have been filed in state and federal courts, and these legal challenges continue today.

As poorly drafted as California's ABC test was, the PRO Act's ABC test is far more expansive. There are no worker exemptions in the PRO Act's independent contractor provision. Simply put, as

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<sup>13</sup> California Labor Code 2775(b)(1)(B).

<sup>14</sup> Text of California Assembly Bill 5 (2019).



harmful as A.B. 5 is, it at least recognizes that the ABC test is inappropriate for determining independent contractor status in numerous industries and business sectors. The PRO Act in no way recognizes this fact, and instead imports a highly-flawed standard across the board, applicable to all workers in all industries.

### **Franchising already “heavily regulated”**

Senators should keep in mind that multiple federal statutes currently provide the rules of doing business by the franchising method. Indeed, franchising is already a “heavily regulated” method of doing business,<sup>15</sup> as it is fundamentally governed by the Lanham Act, the FTC Franchise Rule and multiple joint employment tests.

As mentioned earlier, the Lanham Act is the federal law regulating trademarks, service marks, and unfair completion, and it mandates that owners of trademarks must “maintain[] sufficient control of the licensee’s use of the mark to assure the nature and quality of goods or services that the licensee distributes under the mark.”<sup>16</sup> Moreover, because the Lanham Act provides that a trademark can be deemed “abandoned” when “any course of conduct of the owner . . . causes the mark . . . to lose its significance,”<sup>17</sup> franchisors have a strong incentive to control the nature and quality of the good or services sold by their franchisees. As a result, franchisors are compelled to establish and monitor brand standards and provide global oversight of their franchisees. Likewise, it is imperative that franchisees protect their franchisors’ brands, and the trademark value of those brands. A franchisee, functioning as an independent operator under a Brand License, is trusted and relied upon (by the franchisor) to protect the trademark value in implementing brand standards, and to exercise day-to-day management over the operation, since the franchisor is not present at every individual franchise location. Because franchising requires the collective use by franchisees and franchisors of Marks, all stakeholders affiliated with a brand collectively share risks and rewards. For example, if a franchisee fails to take adequate steps to protect the brand or otherwise engages in an action that injures the brand’s reputation, the damage inflicted on the brand impacts all of the brand’s stakeholders, including all other franchisees and the consuming public. With that being the case, it is essential to franchising that all the stakeholders understand the expectations for brand protection standards and take all necessary action to ensure that those standards are met. Furthermore, these rights and obligations are enunciated in well-drafted franchise agreements and reviewed in advance under a prescribed set of mandated disclosures.

The Federal Trade Commission (FTC) authorizes and regulates the sale of franchises in the U.S., and defines a “franchise” in part as “any continuing commercial relationship or arrangement” whereby the franchisor promises that the franchisee “will obtain the right to operate a business that is identified or associated with the franchisor’s trademark...”<sup>18</sup> In 1978, the FTC published the Franchise Rule, which provides prospective purchasers of franchises information they may use to weigh the risks and benefits of a franchise investment, and requires franchisors to provide potential franchisees with specific items of information about the offered franchise, its officers, and other franchisees. Importantly, the Franchise Rule mandates that a franchisor “exert a significant degree of control over the franchisee’s method of operation.”<sup>19</sup> However, many state independent contractor laws require businesses to classify workers as employees unless they are “free from

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<sup>15</sup> *Cislaw v. Southland Corp.*, 4 Cal. App. 4th 1284, 1288 (1992)

<sup>16</sup> 15 U.S.C. § 1064(5)(A).

<sup>17</sup> 15 U.S.C. § 1127.

<sup>18</sup> 16 C.F.R. §436.1(h)(1) (the “Franchise Rule”)

<sup>19</sup> *Ibid.*

control” and direction while performing their work. Taken in a literal sense, this requirement would ignore the realities of the franchise model, and so the conflicting “control” requirements of the FTC’s Franchise Rule and the Lanham Act must be viewed as preemptive. Below is a discussion of a recent Massachusetts decision in which a federal judge ruled in favor of a franchisor based on the Franchise Rule’s requirements, finding that the Rule preempted the conflicting state independent contractor standard.

Franchising is also subject to joint employment tests under multiple federal laws. Under the Fair Labor Standards Act, courts around the country have issued divergent rulings on the joint employer issue, most of which purport to apply the Department’s previous, outdated joint employer regulation. The number of different standards and factors employed in each test by various courts has bewildered and frustrated employers seeking to operate franchise businesses efficiently and profitably, without inadvertently creating joint employment. By way of examples only, the Second Circuit has applied a six-factor test in *Zheng v. Liberty Apparel Co.*, while the Third Circuit applied four different factors in *Enterprise Rent-A-Car Wage & Hour Employment Practices Litigation*, the Fourth Circuit utilized a different six-factor test in *Salinas v. Commercial Interiors, Inc.*, while various cases in the Seventh Circuit have applied “economic realities” tests (that are indeterminate in nature), and the Eleventh Circuit applied an eight-factor test in *Freeman v. Key Largo Volunteer Fire and Rescue Dept., Inc.* Adding to this complication, under federal civil rights laws, courts have applied (again, not always uniformly or consistently), a multi-factor “common law” test.

And, most relevant to the PRO Act, prior to the promulgation of joint employer regulations by the NLRB in 2020, courts and the Board interpreted “joint employer” status under the NLRA inconsistently, most notably adopting a standard in 2015’s *Browning-Ferris* case that would find an employer to be the joint employer of another company’s employees, where an employer exercised only indirect, limited, or routine control of an unrelated firm’s employees, or perhaps only reserved that right to control.

As discussed above, the PRO Act would create a severe conflict in federal law. Long-standing federal trademark law requires a franchisor to exert certain brand controls over its franchisees, to protect the franchisor, all franchisees, and most important, the consuming public, which can know with certainty that it will have the same quality of experience or purchase across a franchisor’s numerous franchises around the country or around the world. The PRO Act, on the other hand, would use those legally-required obligations to create liability for franchisors for acts over which they had no control, simply because they were fulfilling their obligations under the Lanham Act and FTC Franchise Rule. Put most simply, the PRO Act ultimately tells franchise brands, “heads I win, tails you lose.”

### **Alternatives to the PRO Act**

There are so many better ways to promote both worker AND small business interests than the extremist PRO Act.

The franchise business community stands ready to collaborate with senators to find policies that will better support workers and employers. We support efforts that encourage brands to share information and best practices with franchise owners on COVID-19 safety measures and employee education. Thus, rather than considering the extremist PRO Act, which would dramatically change liability rules during a small business economic recovery, the Senate should be proactively finding ways to encourage businesses to engage in important corporate social responsibility activities and

develop apprenticeship training programs by providing a safe harbor for these practices from additional liability.

### **Myths and realities about franchising**

Through no fault of ours, franchise business owners have faced an increasing number of public policy threats to our mode of operation. One critic, Brandeis professor Dr. David Weil, whom the Committee is currently considering to return as Wage and Hour Administrator, claimed in his 2014 book, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, that businesses (namely, franchise brands) have increasingly shed their role as direct employers of the people responsible for their products, in favor of outsourcing work to small companies (franchise owners). While Dr. Weil may have his own ideological motivations for promulgating his assumptions, he claims that the result of the franchise business model has been declining wages, eroding benefits, inadequate health and safety conditions, and ever-widening income inequality for workers. These claims are simply not borne out by the facts.

To test Weil's hypotheses, earlier this year the IFA asked Oxford Economics to examine the value of the franchising model along a range of dimensions. There were three goals for this research:

- 1) Analyze pay, benefits, and training at franchised firms and compare these attributes with similar non-franchise employers where possible;
- 2) Assess franchising as a path to entrepreneurship and uncover areas where the business model provides vital support to prospective business owners; and
- 3) Understand how franchisees are embedded in their local communities by examining their supply chains and charitable giving.

While the full report will be released in Fall 2021, the primary findings of a survey of more than 3,500 franchisees is summarized below:

- 1) **FRANCHISES OFFER PAY, BENEFITS, AND TRAINING ON PAR WITH COMPARABLE NON-FRANCHISE SMALL BUSINESSES.** To determine how wages at franchise firms stack up, the report will explore wage data from a sample of 3,700 franchise and 137,000 non-franchise small businesses, drawn from a payroll database. An econometric analysis of workers' wages controlling for a variety of factors finds that workers at franchise firms earn slightly more than workers at non-franchise firms, although the difference is statistically insignificant. This is consistent with existing academic research, including Cappelli and Hamori (2008) and Kruger (1991). Franchise firms in our dataset are somewhat larger on average (13.6 versus 9.6 distinct workers per month), in line with results from the 2016 Annual Survey of Entrepreneurs. An analysis of newly hired workers also finds that starting wages, wage growth, and worker turnover are extremely close between franchises and non-franchises, while franchise workers were somewhat more likely to be promoted to manager (14% of remaining workers after 19 months vs. 11% at non-franchises).
- 2) **FRANCHISING OFFERS A PATH TO ENTREPRENEURSHIP TO ALL AMERICANS, BUT ESPECIALLY TO NEW ENTREPRENEURS AND WOMEN.** The 2016 Annual Survey of Entrepreneurs (ASE) suggests that franchise businesses tend to be larger than non-franchise businesses. The report suggests that, on average, franchises report sales 1.8 times as large as non-franchise businesses and provide 2.3 times as many jobs as non-franchise

businesses. Sales and jobs in franchised businesses exceed non-franchised businesses across all demographic cuts, including gender and race. For example, Black-owned franchise firms earn 2.2 times as much in sales compared to Black-owned non-franchise businesses, on average.

- 3) **FRANCHISES ARE LOCALLY OWNED AND THIS KEEPS RESOURCES IN THE LOCAL COMMUNITY.** Unlike the multi-unit company-owned business model, franchises allow franchisees to buy and own the units they operate. By doing so, franchisees essentially become small business owners, who live and work in their communities. The brands they represent do not ship workers in from other parts of the country, but rather franchisees recruit and train local residents. The franchise model therefore encourages local employment and wealth-sharing with local communities.<sup>20</sup>

While some use Dr. Weil's core hypotheses as justification for the PRO Act, we can now see that many of Weil's core assumptions about franchising are incorrect. This forthcoming Oxford Economics report will show that franchises offer wages, benefits, and training on par with similar non-franchise small companies. The study will also show that franchising offers a path to entrepreneurship to all Americans, but particularly to first-time owners and women. Lastly, the report will highlight how franchisees are embedded in their local communities through their local supply chains and charitable giving.

In sum, all of the economic opportunity and contribution made by businesses operating under the franchise model is on the line as the Senate considers the PRO Act. It's not too late for lawmakers to realize the unintended consequences of the PRO Act, to avert course, and to protect small businesses at a time when many Main Street owners are simply trying to pay their bills with uncertain income during the global pandemic. Millions of workers and companies, and not just franchises, will be harmed if the PRO Act ever becomes law.

## **Conclusion**

Franchise small businesses are poised to lead our country's economic recovery and are particularly well-suited to ensuring that hard-hit minority communities have access to the opportunity and equity they need to build back better. Unfortunately, the extremist PRO Act jeopardizes that.

Put simply, this legislation could end the franchise business model, the business format that has perhaps provided the most accessible path to business ownership for entrepreneurs of all backgrounds. It makes little sense to promote organized labor's political power at the expense of women entrepreneurs, veteran entrepreneurs, LGBTQ+ entrepreneurs and entrepreneurs of Color.

Thank you Madam Chair, for holding this hearing and for the invitation to speak on behalf of small business owners everywhere. While I am honored to participate today, it is important to recognize and respond to the legislative overreach represented by the PRO Act. I urge all members of this Committee to support locally owned businesses in your states by stopping this legislation. I look forward to answering any questions you may have.

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<sup>20</sup> Oxford Economics (2021).