

**JOHN SIMS IV
OWNER / OPERATOR
RAINBOW STATION AT THE BOULDERS**

**U.S. SENATE COMMITTEE ON HEALTH, EDUCATION,
LABOR & PENSIONS**

**“WHO’S THE BOSS? THE “JOINT EMPLOYER”
STANDARD AND BUSINESS OWNERSHIP”**

February 5, 2015

Chairman Alexander, Ranking Member Murray, and distinguished members of the Committee, thank you for the opportunity to testify before you today.

My name is John Sims. I am an owner and operator of Rainbow Station at the Boulders, an early education center located in Richmond, Virginia. I am a small business owner, an entrepreneur and a franchisee. I come before you today to discuss my concerns regarding an expanded definition of joint employer and the very real threat to my business that a new joint employer standard brings.

I am here today on behalf of my business because I am extremely troubled by recent events at the National Labor Relations Board related to the joint employer standard. I believe that unelected government officials are inventing a new definition of “joint employer” that may threaten the livelihoods of local business owners like me.

My family and I moved to Richmond from Northern Virginia nearly two years ago. My wife and I made this move so that our three young daughters – Ellie (8), Mary (5) and Kirby (3) – could grow up close to their grandparents and the rest of our extended family. Prior to the move, I worked for a non-profit organization in Northern Virginia managing parks and recreational facilities. I enjoyed my job and was hoping to find an opportunity in Richmond that would allow me to capitalize on my experience operating recreational facilities and also allow me to continue working with children. My wife and I spent a great deal of time thinking about what type of job or business opportunity would be the best fit for our family.

We decided to explore the idea of purchasing an existing business. We considered both independent businesses and franchises. We ultimately decided that a franchise opportunity would be the best fit for our family because it would allow me to be an independent business owner but still be able to work with a proven brand and business model.

In the summer of 2013, I purchased my Rainbow Station franchise. Rainbow Station is a child care and early education center committed to quality education and recreation programs designed to foster social, emotional, physical and cognitive development in children. We offer nursery school, pre-school and kindergarten programs as well as a before & after-school program for school-age children and a summer camp. I knew Rainbow Station was the right fit for me given my education degree and prior work experience. We currently have 35 employees and have almost 200 children enrolled in our programs.

The franchising arrangement with Rainbow Station is pretty simple. They provide the brand materials, including the trademarks and logos, curriculum, and some marketing materials. But, in all other respects, I operate as an independent stand-alone business, just like a non-franchise small business owner. I have the autonomy to run my business as I see fit, including on matters such as staffing, labor costs, enrollment fees, and vendor relationships, among others. For example, I determine the staffing level for my business, I make all the hiring decisions, and I determine what wage rates to offer. Rainbow Station does not have a role in this aspect of my business whatsoever. Similarly, I am solely responsible for determining what to charge for the various programs we offer. My decision-making on all of these issues must take into account market forces in the local economy such as availability of qualified employees or the typical level of discretionary spending by local families with children.

Small businesses like mine play a valuable role in our economy. They provide entrepreneurial opportunities for people looking to better themselves, create jobs and grow local economies. Many small business opportunities exist because these local businesses can provide valuable services and other benefits to larger corporations. However, if large businesses are now

liable for the employment decisions of their service providers, franchisees, or other contractors, then the opportunities for small businesses are surely going to disappear.

The small business community is bracing for the NLRB's decision in the forthcoming *Browning-Ferris* case. I'm not a lawyer but it's no mystery where the NLRB is likely headed; The NLRB General Counsel asserts that "the Board should abandon its existing joint-employer standard." The General Counsel also asserts that companies may effectively control wages by controlling every other variable in the business. The General Counsel's new standard shifts the analysis away from the day-to-day control over employment conditions to operational control at the system-wide level. Under the new standard, franchisors would be joint employers whenever the franchisor exercises "indirect control" over the franchisee. The focus would be on "industrial realities" that make the franchisor a necessary party to meaningful collective bargaining. The NLRB would find joint employment even though the franchisor plays no role in hiring, firing, or directing the franchisee's employees.

My Rainbow Station location was previously owned by the franchisor and was not a franchisee-owned location. I believe that if a broader joint employer standard, such as the one NLRB is contemplating, had been in place two years ago there is a very good chance that Rainbow Station would have opted to maintain corporate ownership and they would not have franchised the location. Quite frankly, if Rainbow Station is going to be responsible for the liabilities arising out of the operation of the business and oversight of the workforce, why would they hand over control to someone else? I think many businesses will feel this way and opportunities for local business ownership will decline dramatically. I know how fortunate I am to own my own business and be able to provide for my family. While Rainbow Station provides advice and support when I need it, I am the decision-maker when it comes to my business. The success or failure of my business is, essentially, all on me -- and that is what I love about it. It would be a real shame to take these types of opportunities away from people like me.

Fortunately, two years ago the opportunity for small business ownership did exist and I am privileged to be a proud Rainbow Station owner. However, if the Labor Board radically changes the joint employer standard, I fear that my days as an autonomous business owner will be numbered. If my liabilities extend back to Rainbow Station as the franchisor, I have to assume that they are going to want a role in managing risks and protecting against those liabilities. Now, instead of occasionally providing me with guidance and support, Rainbow Station will be an active participant in the day-to-day operation of my business. They will, presumably, want a say in how many employees we use to run our business, who we hire, and what we pay. This level of franchisor involvement will be a complete reversal of the way the franchise relationship is intended to work. My freedom and autonomy – the entire reason I wanted to own my own business – will vanish. I am very worried about this possibility.

My wife and I have often talked about opening a second Rainbow Station location. However, the uncertainty as to what the future holds for franchisees and other small businesses has forced us to put that plan on hold. It simply does not make sense to try and grow our business at a time when we do not know what the future of our business will be. The uncertainty on this issue is hurting my family and many other families like mine who own and operate small businesses.

Mr. Chairman, I strongly urge this committee to consider the devastating impact on all small business owners if the NLRB invents a new definition of joint employer to the potential detriment of local businesses like mine. I ask you to take steps to ensure that the National Labor Relations Board cannot take away my livelihood now or in the future.