

Statement on:

**To: U.S. House Committee on Education and the Workforce,
Subcommittee on Health, Employment, Labor and Pensions**

**By: Alex Salgueiro, BURGER KING® Franchisee,
Savannah, Georgia**

Date: August 26, 2015

Chairman Roe, Ranking Member Polis and members of this Committee, thank you for the opportunity to submit my testimony today. My name is Alex Salgueiro and I am the Chief Executive Officer of Savannah Restaurants Corporation owning ten BURGER KING® restaurants in and around Savannah, GA. I would like to note that I am a small business owner; my views are my own and may not reflect those of Burger King Corporation or other franchisees within the BURGER KING brand.

Born in Havana, Cuba in 1954, I am the son of a former Cuban governor who fled to the United States after the Cuban revolution. After two years in hiding, my family and I were able to join my father and seek refuge in the United States. As a boy growing up in Miami, FL, I first became a crew member at a local BURGER KING® restaurant when I was 14 years old. After years of hard work and dedication, I became a district manager for Burger King Corporation and was tasked with opening the first BURGER KING® restaurants in countries including England, Denmark, Sweden, Panama, Ecuador and Venezuela and Columbia. I then settled in Atlanta, GA, where I became an area manager for Burger King Corporation for five years.

My experiences with the BURGER KING® brand helped me recognize the opportunities available for lower and middle class Americans; through franchising, people can live the American dream of owning a business, creating jobs and giving back to the community. After 16 years working for the BURGER KING® brand, I decided to leave the corporation and purchase my own BURGER KING® franchise.

I now own 10 BURGER KING® restaurants, employing over 350 individuals in and around Savannah, GA. Several years ago, I owned as many as 15 restaurants employing over 480 individuals, but due to government mandates contained in laws such as the Affordable Care Act, I was forced to sell or close a third of my businesses and put some of my employees out of work.

I am here today to talk to you about the impact of yet another likely mandate on my business – the joint employer standard as proposed by the National Labor Relations Board (NLRB). As I understand it, the NLRB would like to expand the standard from requiring “direct control” to looking at the “totality of the circumstances” in determining whether franchisors and franchisees should be considered “joint employers” for labor claims. For the reasons below, and on behalf of a business that is solely owned and run by me, application of the proposed new standard would be devastating to my business, my employees and the franchise model in general.

The Franchise Model

Appreciating the franchise model is essential to understanding that a new joint employer standard would be devastating to all parties involved. As a franchisee, I am required to carry certain trademarks and other identifiers consistent with the BURGER KING® brand. This model provides my business with brand recognition and quality control measures designed to ensure that customers receive a high quality experience no matter what franchise they visit.

That being said, I've signed agreements specifically identifying myself as an independent owner and operator of my BURGER KING® restaurants. I became a franchisee because of the opportunity to be my own boss and hire people from the community. I own my businesses and am in complete control of the hiring, firing, scheduling, and duty assignments of my employees among many, many other responsibilities. In fact, in my 45 years working for both the corporation and as a franchisee, I have never been part of any discussions between Burger King Corporation and a franchisee over personnel matters; franchisor-franchisee discussions have always been limited to non-labor business issues such as advertising, marketing, restaurant operations and vendor sourcing to name just a few. The franchise agreement specifically establishes franchisee independence - the cornerstone of the entrepreneurial spirit. By changing the definition of control from "indirect" to "direct", the proposed joint employer language destroys an essential element of the franchise model.

As a franchisee, I also agree to a provision in my franchise agreement which indemnifies Burger King Corporation ("BKC") against

Claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages, (including but not limited to reasonable attorney's fees) unless resulting from the negligence of BKC. BKC's right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on BKC by statute, ordinance, regulation or other law. [t]his indemnity obligation shall include, but not be limited to, claims related to the employment of Franchisee's employees.¹

As a result, if Burger King Corporation is treated as a joint employer, labor claims will skyrocket and all legal and financial obligations related to those claims will fall on my shoulders. As a small business owner, the time and cost required to defend claims against both the corporation and myself will take time away from running my business, drain my resources and will very likely cause me to go out of business.

Impact on Franchisees

To put it plainly, a more broad joint employer standard would destroy the franchise model as we know it. Threatened with increased liability, franchisors will be forced to implement extreme oversight policies in local franchises across the country. As a result, franchisors will increase not only corporate oversight efforts, but implement extreme, detailed franchisee and employee policies which will shift franchisees' focus from running their business and providing superior customer service.

As a franchisee, I will be no more than a glorified manager in my own restaurant. As the best resource to determine the needs of my local community and workforce, I will have no flexibility in

determining the daily operations of my business. Further, increased franchisor oversight will undermine my relationship with my employees and leave me in constant fear of labor claims. The years of labor and hundreds of thousands of dollars I have invested in my business will result in nothing more than an income and an employer manual.

Impact on Franchisors

In addition to the oversight described above, a broader joint employer standard will likely cause franchisors to reconsider their corporate structure. A threat of increased liability may lead to increase corporate buy outs in an effort to consolidate franchisor oversight and management. As a result, the new joint employer proposal will likely lead to store closures, job losses, and reduced economic activity and community support. In a brand that is almost 100% franchised, thousands of BURGER KING® owners and operators will be forced to sell their business and leave their employees uncertain of their futures.

The new joint employer standard as proposed by the NLRB will quickly destroy a successful business model which has been in place for decades. The current standard, which correctly defines the terms in which an entity should be considered an employer, has been effective for all parties involved and will continue to work for years to come. For the reasons stated above, implementation of a new, broader standard will place unprecedented burdens on franchisees. For me, I will likely be forced to either close my restaurants or sell them to the corporation. Either way, this proposal will likely cost small business owners like me to close their doors and put hundreds of thousands of employees out of work.

My BK franchise has allowed me, and many other minorities like me, to attain the American Dream. Unfortunately, if the new joint employer standard, as proposed, is enacted, then it will destroy the ability for many middle class minority individuals like myself to be able to use franchising to attain the American Dream.

I thank you for your time and consideration of this very important issue.

ⁱ BURGER KING® Franchise Agreement (Entity) Exhibit D (04/2014, as amended 10/2014) BK#2008