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UNITED STATES AIR FORCE**

**OWNER / OPERATOR
CERTAPRO PAINTERS OF MOBILE AND
BALDWIN COUNTIES**

**TESTIMONY BFORE THE U.S. HOUSE
COMMITTEE ON EDUCATION AND THE
WORKFORCE**

**SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR & PENSIONS**

**“REDEFINING ‘EMPLOYER’ AND THE
IMPACT ON ALABAMA’S WORKERS AND
SMALL BUSINESS OWNERS”**

MOBILE, ALABAMA

AUGUST 25, 2015

Chairman Roe, Congressman Byrne, and distinguished members of the Subcommittee, thank you for the invitation to testify before you today. My name is Steve Carey. I am an owner and operator of CertaPro Painters of Mobile and Baldwin Counties, a fully licensed, bonded and insured residential and commercial painting company. I appear before you on behalf of the Coalition to Save Local Businesses and the International Franchise Association. I am extremely troubled about the National Labor Relations Board's (NLRB) expanded application of "joint employer" and the very real threat to my business that a new joint employer standard brings.

Mr. Chairman, I am a small business owner, an entrepreneur and a franchisee. However, I believe that the NLRB is doing Congress' job making new law by inventing a new definition of "joint employer." This new standard seems to ignore all precedent in federal labor law and threatens the livelihoods of small business owners, entrepreneurs and franchisees like me. Small businesspeople are also concerned that this expanded standard is being applied by other federal agencies, including the Department of Labor and the Occupational Safety and Health Administration, and these regulatory overreaches jeopardize the growth of local businesses.

As background, the Coalition to Save Local Businesses (CSLB) is a diverse group of locally owned, independent small businesses, associations and organizations. The group is dedicated to protecting and strengthening all sectors of small business, which are now under attack by the NLRB, a regulatory body of five unelected Washington bureaucrats. The Coalition's goal is to maintain to the current joint employer legal standard across federal and state statutes.

The International Franchise Association (IFA) works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising. Today there are more than 780,000 franchise establishments that support nearly 8.9 million direct jobs, \$890 billion of economic output for the U.S. economy and three percent of Gross Domestic Product (GDP). IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law and other areas.

My wife, Mary Charlotte, my three children, Clark, Camille and John Charles, and I live in Daphne, Alabama. My family and I moved to Mobile, Alabama seven years ago after I retired from the United States Air Force. My family moved to Daphne to be closer to my wife's family in Mobile after working at Maxwell Air Force Base. I purchased a CertaPro Painters franchise in 2008 in Mobile and Baldwin counties. Prior to owning the franchise, I served as a Colonel in the U.S. Air Force. I retired as the Commandant of the College of Aerospace Doctrine, Research and Education (CADRE), and the Vice Commander, Air Force Doctrine Center, Air University, at Maxwell Air Force Base, Alabama. I served in the Air Force for 30 years and am a combat veteran, former F-15 and F-16 Fighter Pilot, Instructor and Mission Commander.

As a 30-year Air Force veteran who has transitioned to a successful career in franchising, I want to highlight the International Franchise Association's VetFran initiative. Since 2011, the IFA has more than achieved its original goal of recruiting 75,000 veterans and their spouses to become franchise business owners and employees in the industry, as nearly a quarter of a million veterans have found career opportunities in the franchise industry through the VetFran initiative. The IFA and franchise businesses

are proud to help our nation's veterans find career opportunities here at home. In fact, the VetFran program benefitted me and my family as we opened our franchise operation.

In my Air Force career, I developed the characteristics and honed the skills necessary to run a world class organization. I transferred these skills into my 'second life' as a franchisee. These skills include leadership, professionalism, integrity, attention to detail, conflict resolution, creative problem solving, and excellence in field operations management. As a result, I have earned an A+ rating with the Better Business Bureau, national awards for customer satisfaction and operate the number one referred home painting company in Southern Alabama. I have generated dramatic growth, doubling production in three years and received numerous regional and national awards. In 2009, I was recognized at the Southeast Franchise of the Year and in 2010, I was the number one Development Franchise in North America. I have focused on delivering an unmatched brand of certainty and integrity to his industry and our community.

Locally, I serve on the Executive Board of the Eastern Shore Chamber of Commerce (ESCC) as well as the Mobile Area Chamber of Commerce (MACC). I am also the Director of the ESCC Foundation for Workforce Development and the Vice Chairman of the Student Training and Exploration Program. As the MACC Vice Chair for the Military Affairs, I help build public awareness and promote veteran issues with local businesses by hosting the annual Military Appreciation luncheon at the USS Alabama Battleship. Recently, I was selected to serve on the Alabama Red Cross Board of Directors and received a state appointment to the Alabama Aviation Hall of Fame Board of Directors. A strong supporter of education and youth development, I am also the President of the South Alabama Air Force Association working to improve science, technology, engineering and math skills at local elementary and high schools while promoting the development of aerospace initiatives at the University of South Alabama and West Florida ROTC programs.

Why did my wife and I pursue a career in franchising? After I retired from the Air Force, we spent a lot of time deciding what would be the best local business for our family. We explored the idea of purchasing an existing business, and considered both independent businesses and franchises. We decided that a franchise opportunity would be the best fit for our family because it allowed me to run an independent business, but still be able to work with a proven brand and business model.

In September 2008, I purchased my CertaPro Painters franchise. CertaPro is a residential and commercial full service painting franchise. I knew CertaPro was the right fit for me because it was a service business, with low overhead, in large demand by property owners and management companies in our region, which is still trying to rebuild after the devastation of Hurricane Katrina ten years ago this week. In addition, through the VetFran program, CertaPro offers a ten percent discount on its franchise fee to honorably discharged veterans. The skills I learned over the thirty years spent serving our country certainly made franchise ownership a good fit for me and my family here in Alabama.

The franchise arrangement with CertaPro is fairly simple. I pay CertaPro for the use of brand materials, including the trademarks and logos, estimating and project management tools, and some marketing materials. But, in all other respects, I operate as an independent, stand-alone business, just like any non-franchise small business owner. I have the autonomy to run my business as I see fit, including on matters such as all

staffing, labor costs, subcontractor selection, marketing, and vendor relationships. For example, I determine the staffing levels for my business, I make all of the hiring decisions, and I determine what wage rates to offer. CertaPro has no role in the employment aspects of my business at all. I am solely responsible for determining what to charge for each job. My decision-making on all of these issues must take into account market forces in our local economy such as availability of qualified employees or the cost of similar residential and commercial painting jobs in the area. I am also completely responsible for developing accounts and business. I run my businesses day-to-day, CertaPro corporate does not.

Small businesses like mine play a valuable role in our local economy. We provide entrepreneurial opportunities for people looking to create jobs and grow other local economies. Many small business opportunities exist because these local franchise businesses can provide valuable services and other benefits to larger corporations. However, if large businesses were 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, a decision that some expect may come as early as this week. I'm not a lawyer, but there appears to be little suspense about where the NLRB is headed; The NLRB General Counsel believes that "the Board should abandon its existing joint-employer standard." The General Counsel also asserts that companies may effectively control wages by controlling other variables in the business. This is a colossal concern to me, because under the new standard, franchisors would be joint employers whenever the franchisor exercises "indirect control" over the franchisee. Under such a nebulous standard, the NLRB could find joint employment even though the franchisor plays no role in hiring, firing, or directing the franchisee's employees. I am concerned that other federal agencies may adopt this standard, which would further increase franchise business liabilities.

This could be a transformative ruling for small businesses. I believe that if a broader joint employer standard, such as the one NLRB is contemplating, had been in place seven years ago there is a good chance that CertaPro would not have franchised my businesses, instead they would have chosen to open a corporate location. If CertaPro 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 control over to me? Many businesses may feel this way and opportunities for local business ownership will decline dramatically. I know how fortunate I am to own my business after my long service in the military. While CertaPro provides advice and support, 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's exactly what I signed up for. It would be a real shame to take these opportunities away from other veterans looking to start their 'second life' as a local franchise business owner as well.

Fortunately, after I retired from the Air Force the opportunity for small business ownership did exist and I am privileged to be a proud local CertaPro owner. However, I am worried that if the NLRB radically changes the joint employer standard, my days as an autonomous small business owner may be numbered. My business may no longer truly be my own. If my liabilities extend back to CertaPro 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, CertaPro will be an active participant in the day-to-day operation of my business. They will probably want a say in we 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, and always has been intended to work. My freedom and autonomy – the entire reason I wanted to own my own business – will vanish.

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 do what Congress can to ensure that the National Labor Relations Board cannot take away the livelihoods of local small business owners now, or in the future.

Thank you again for the invitation today and for considering my views as an Alabama small businessperson.