

Congress of the United States
Washington, DC 20515

October 1, 2018

The Honorable R. Alexander Acosta
Secretary
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Subject: Modernization of 29 Code of Federal Regulations [CFR] 791.1 and 791.2 - Joint
Employer Status

Dear Mr. Secretary:

The undersigned write to request that the U.S. Department of Labor develop rulemaking to clarify the current standard for determining Joint Employer Status under the Fair Labor Standards Act (FLSA). The conflicting and outmoded FLSA standards for joint employment have contributed to overly costly litigation for small businesses. This is not a cost that most Main Street businesses can bear, and it is very important that unnecessary lawsuits be curbed through reasonable regulation.

As you know, the FLSA regulations were written nearly 70 years ago and are badly in need of clarification. In fact, while the two Code of Federal Regulations sections dealing with joint employer are dated 1958 and 1961, the language of the interpretation was actually issued in two bulletins dated 1939 and 1940. The current regulations have not been updated at all since a 1961 interpretation to a footnote. In addition, both the current interpretive language and the 1961 footnote were published as a “statement of general policy or interpretation not directly related to regulations” without notice or public comment. As a result, it relies on court cases from the 1940s and 1950s and does not reflect current case law.

More importantly, differing tests of joint employer status under the FLSA have developed in the federal circuit courts over time. While some circuits have adhered to a common law agency test or the economic realities test when evaluating joint employment cases, most circuits have gradually chosen to mix and match factors from both tests into various formulations depending on the statutory scheme they are analyzing. The most egregious standard may have been established by the Fourth Circuit’s 2017 decision in *Hall v. DirecTV, LLC*, 846 F.3d 757 (4th Cir. 2017), in which the court held that two or more persons or entities may be found joint employers so long as they are “not completely disassociated” with respect to a relevant worker. Businesses and employees in different states deserve to be subject to the same standard of joint employment liability, and this confusion could be significantly resolved by a new federal regulatory standard.

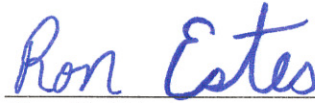
The FLSA’s joint employment requirements need to be modernized and harmonized to limit needless litigation against small businesses, as many different business formats are threatened by

expensive lawsuits against multiple business partners for alleged wrongdoing against only one entity. We therefore respectfully request the Department of Labor propose and finalize a rulemaking to clarify the joint employment standard under the FLSA. It is not an exaggeration that the future success of small business in the United States rests upon the clarification of the joint employer issue.

Sincerely,



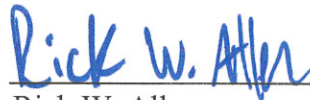
Bradley Byrne
Member of Congress



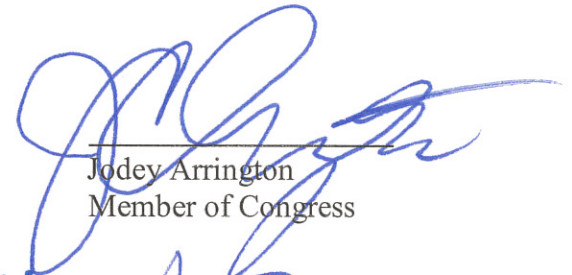
Ron G. Estes
Member of Congress



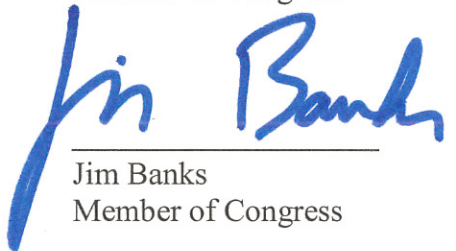
Robert Aderholt
Member of Congress



Rick W. Allen
Member of Congress



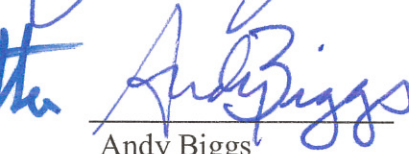
Jodey Arrington
Member of Congress




Jim Banks
Member of Congress



Lou Barletta
Member of Congress



Andy Biggs
Member of Congress



Marsha Blackburn
Member of Congress



Kevin Brady
Member of Congress



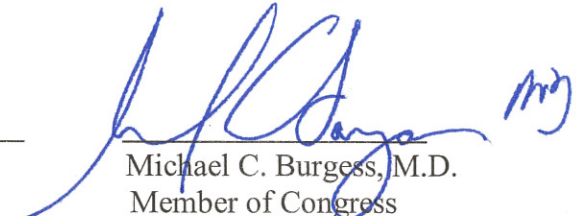
Dave Brat
Member of Congress



Mo Brooks
Member of Congress



Ted Budd
Member of Congress



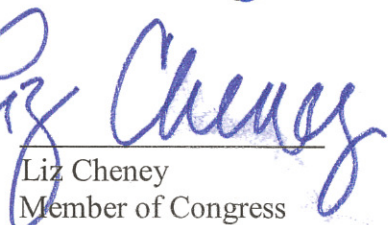
Michael C. Burgess, M.D.
Member of Congress



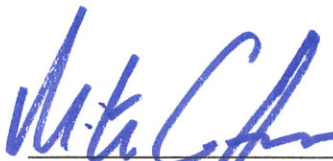
Earl L. "Buddy" Carter
Member of Congress



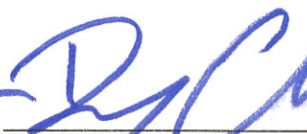
Steve Chabot
Member of Congress



Liz Cheney
Member of Congress



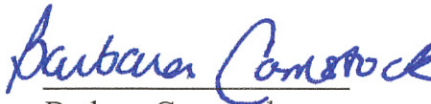
Mike Coffman
Member of Congress



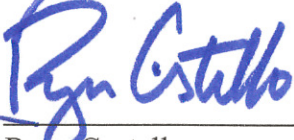
Doug Collins
Member of Congress



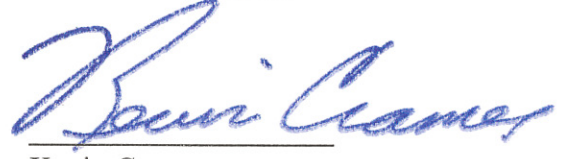
James Comer
Member of Congress



Barbara Comstock
Member of Congress



Ryan Costello
Member of Congress



Kevin Cramer
Member of Congress



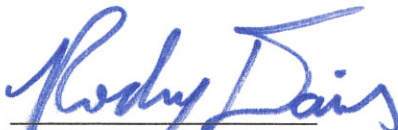
Rick Crawford
Member of Congress



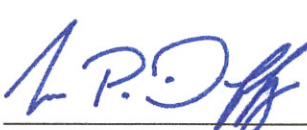
Henry Cuellar
Member of Congress



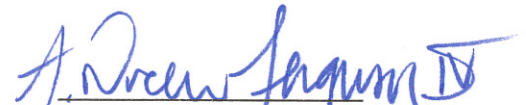
Warren Davidson
Member of Congress



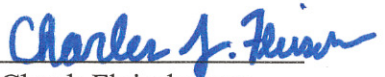
Rodney Davis
Member of Congress




Sean P. Duffy
Member of Congress



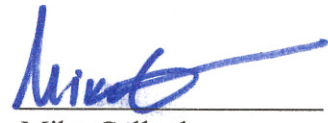
Drew Ferguson
Member of Congress



Chuck Fleischmann
Member of Congress



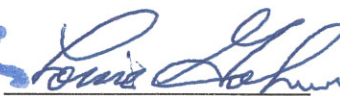
Bill Flores
Member of Congress



Mike Gallagher
Member of Congress



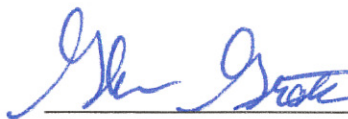
Bob Gibbs
Member of Congress



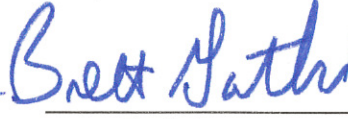
Louie Gohmert
Member of Congress



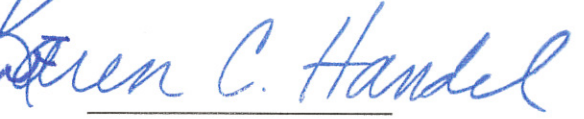
Sam Graves
Member of Congress



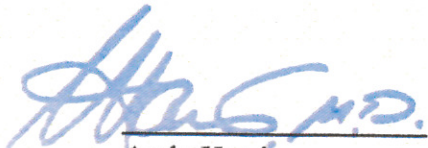
Glenn Grothman
Member of Congress



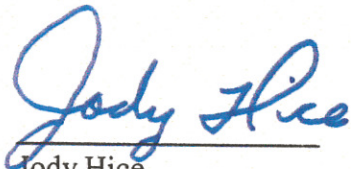
Brett Guthrie
Member of Congress



Karen C. Handel
Member of Congress



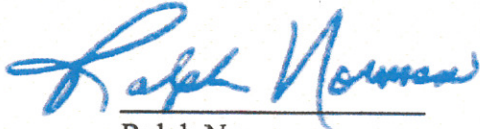
Andy Harris
Member of Congress



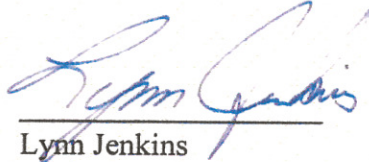
Jody Hice
Member of Congress



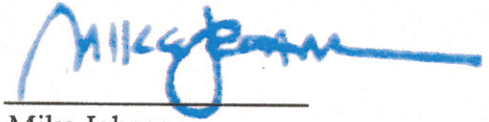
Randy Hultgren
Member of Congress



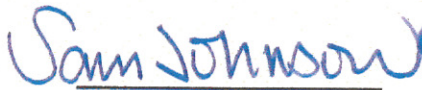
Ralph Norman
Member of Congress



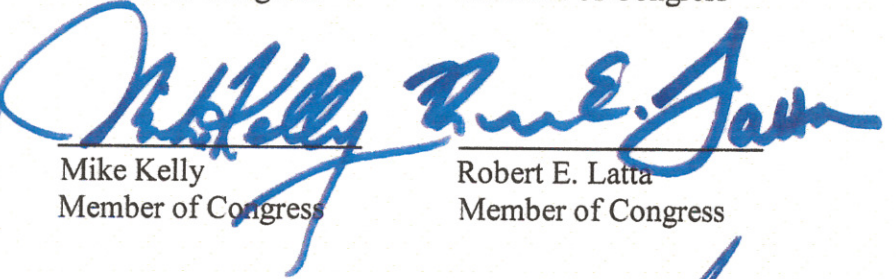
Lynn Jenkins
Member of Congress



Mike Johnson
Member of Congress



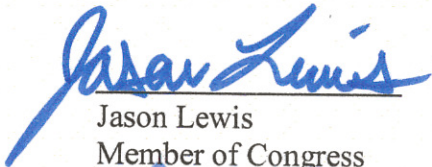
Sam Johnson
Member of Congress



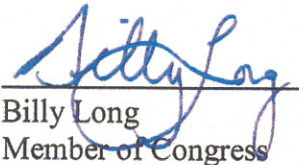
Mike Kelly
Member of Congress



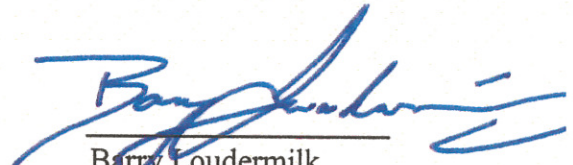
Robert E. Latta
Member of Congress



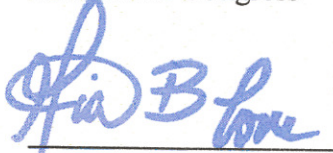
Jason Lewis
Member of Congress



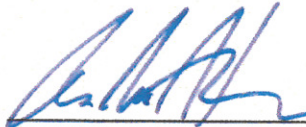
Billy Long
Member of Congress



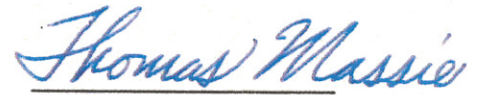
Barry Loudermilk
Member of Congress



Mia B. Love
Member of Congress



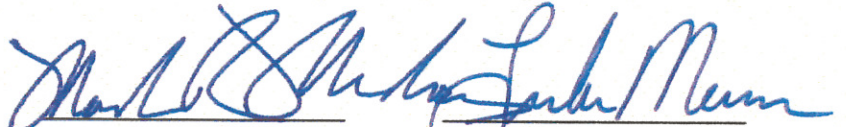
Tom MacArthur
Member of Congress



Thomas Massie
Member of Congress



Martha McSally
Member of Congress



Mark Meadows
Member of Congress




Luke Messer
Member of Congress



Paul Mitchell
Member of Congress



Gary Palmer
Member of Congress



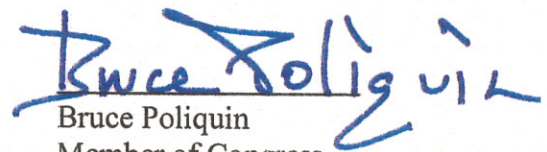
Erik Paulsen
Member of Congress



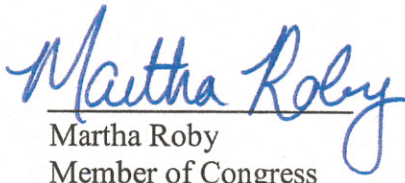
Steve Pearce
Member of Congress

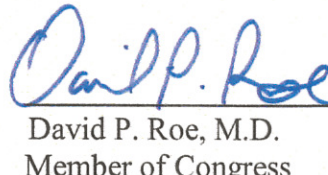


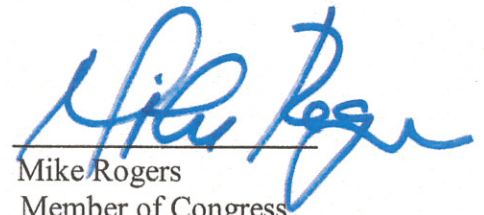
Scott Peters
Member of Congress

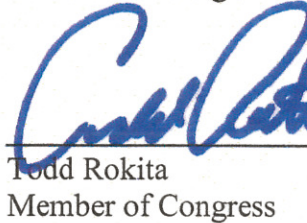


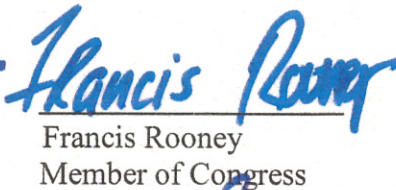
Bruce Poliquin
Member of Congress

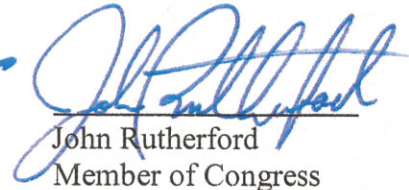

Martha Roby
Member of Congress

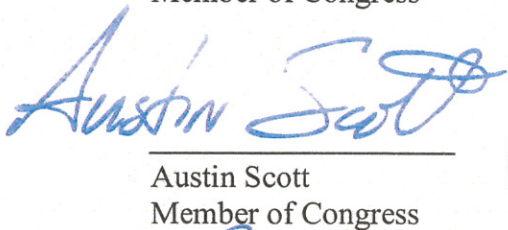

David P. Roe, M.D.
Member of Congress

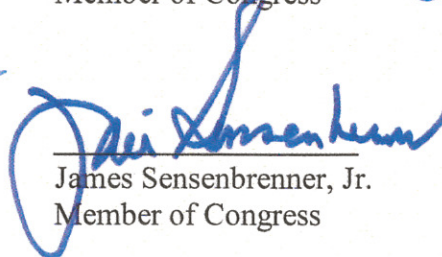

Mike Rogers
Member of Congress

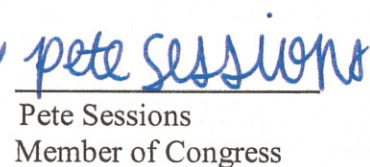

Todd Rokita
Member of Congress

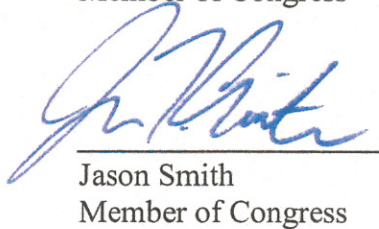

Francis Rooney
Member of Congress

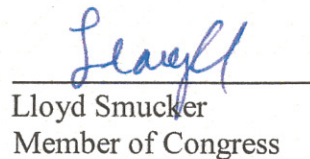

John Rutherford
Member of Congress

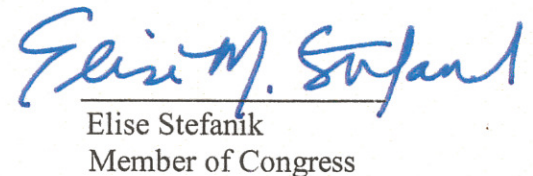

Austin Scott
Member of Congress

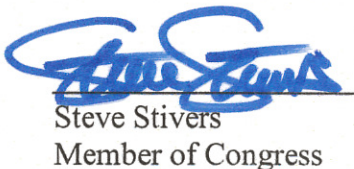

James Sensenbrenner, Jr.
Member of Congress

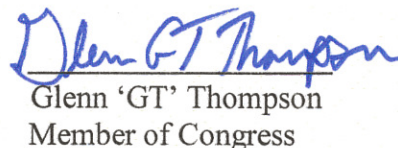

Pete Sessions
Member of Congress

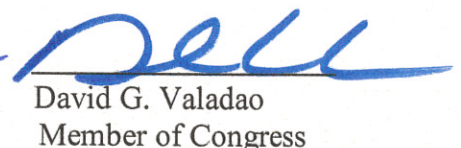

Jason Smith
Member of Congress

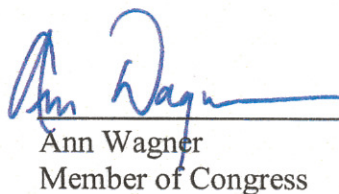

Lloyd Smucker
Member of Congress

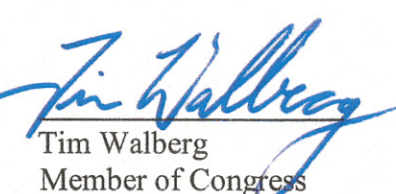

Elise Stefanik
Member of Congress

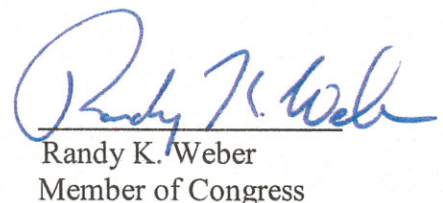

Steve Stivers
Member of Congress

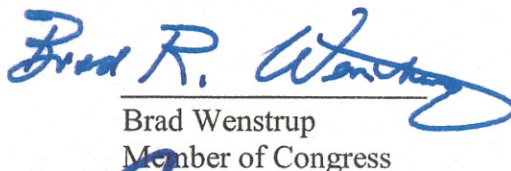

Glenn 'GT' Thompson
Member of Congress

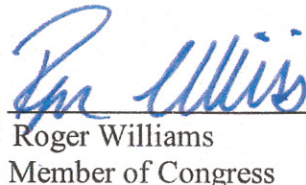

David G. Valadao
Member of Congress

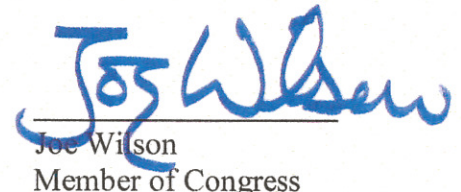

Ann Wagner
Member of Congress

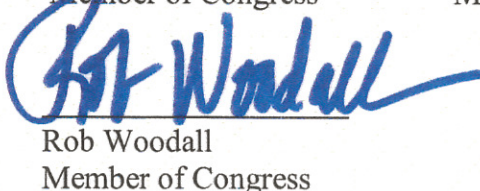

Tim Walberg
Member of Congress


Randy K. Weber
Member of Congress


Brad Wenstrup
Member of Congress


Roger Williams
Member of Congress


Joe Wilson
Member of Congress


Rob Woodall
Member of Congress