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TESTIMONY BEFORE THE U.S. HOUSE COMMITTEE ON EDUCATION AND WORKFORCE

HEARING ON "UNLEASHING AMERICA'S OPPORTUNITIES FOR HIRING AND EMPLOYMENT"

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Good morning Chairwoman Foxx, Ranking Member Scott, and distinguished members of the Committee. My name is Jerry Akers, and I am a franchise business owner of Great Clips and The Joint Chiropractic. I own and operate with my wife and two daughters 34 Great Clips and five The Joint Chiropractic locations in my home state of Iowa, as well as Nebraska. I appreciate 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 challenges of today's labor market. I will focus my comments on the path to recovery from the COVID-19 pandemic, the ongoing workforce challenges which continue to be an issue of great importance to franchise business owners like me, and policies that could diminish my business and my employees. 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). IFA is the world's oldest and largest organization representing franchising worldwide. Celebrating over 60 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 and the approximately 790,000 franchise establishments that support nearly 8.4 million direct jobs, $825.4 billion of economic output for the U.S. economy, and almost 3 percent of the 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 business development.

I have experienced firsthand the remarkable impact that franchise businesses can have on local economies and communities, including their ability to create jobs, develop a skilled workforce, and foster economic growth. My wife and I have created a community of our own employing over 220 team members that have been part of our system over the past several years. As a multi-brand franchise owner and area developer for The Joint Chiropractic, I also assist other franchisees to create success and generate wealth in their communities. We are proud of the growth of franchising and its role in the economic recovery. Franchising had an exceptional year in 2022, and 2023 looks to be another strong year of growth. Even with current economic headwinds, franchising is expected to continue to expand at a more moderate pace, trending upwards with the United States' overall economic progression and exceeding pre-pandemic norms.

In my testimony, I will share how my business has served its employees and local communities and how the franchise business format helped my business and employees during the pandemic; reveal how salons and other small businesses are recovering from the COVID-19 pandemic; and show why harmful policies like the PRO Act needlessly threaten every small business during the economic recovery.

The unique franchise business format

Franchising is perhaps the most important business growth strategy in American history. The first franchises were actually started in the colonies by Ben Franklin, and over the centuries, this system has served as an American model of opportunity and entrepreneurism. In 1731, Ben Franklin entered into a partnership with Thomas Whitemarsh, who franchised his printing business – *The Pennsylvania Gazette*. Later, Whitemarsh would introduce the first "franchised" newspaper of South Carolina, the *South Carolina Gazette*.

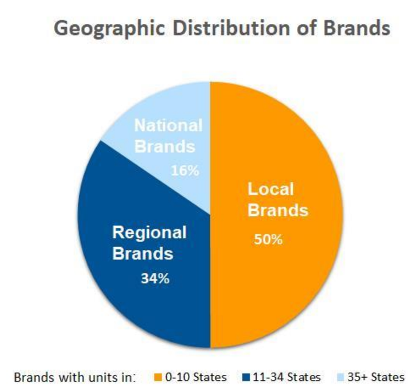
Franchising has contributed to robust job creation, and a skills development ground for small business owners and workers. Today, there are more than 790,000 franchise establishments, which support nearly 8.4 million jobs.[1] Many people, when they think of franchising, focus first on the law. While the law is certainly important, it is not the central thing to understand about franchising. At its core, franchising is about the franchisor's brand value, how the franchisor supports its franchisees, how the franchisee meets its obligations to deliver the products and services to the system's brand standards and most importantly – franchising is about the relationship that the franchisor has with its franchisees.

In essence, a franchise is a local business that licenses the branding and operational processes of a parent company but operates independently in a defined market. The local owner, or franchisee, is responsible for hiring staff, organizing schedules, managing payroll, and all daily operational tasks as well as local sales and marketing. The value of franchising lies in the franchise system giving aspiring small business owners a head start toward becoming their own boss, with easier access to lines of credit than a traditional business and a proven business model that can set up new business owners for success.

In a recent study by Oxford Economics, we found that franchising offers a path to entrepreneurship to all Americans, but especially to minorities and women. Around 26% of franchises are owned by people of color, compared with 17% of independent businesses generally. The study also found that the industry provides better pay and benefits than non-franchised businesses. In addition, franchising offers entrepreneurial opportunities that would not otherwise be available, especially to women, people of color, and veterans.[2] On average, franchises report sales 1.8 times as large 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 generate 2.2 times as much in sales compared to Black-owned non-franchise businesses, on average.

Despite how it is often characterized, franchising is not an industry. Franchising is a business growth model used *within* nearly every industry. More than 300 different sectors are represented in franchising, and franchise companies offer a huge range of products and services from lodging to fitness, home services to health care, plumbing, pest control, restaurants, security, and lawn care.

Furthermore, notwithstanding any popular misapprehensions, franchising consists of far more than merely the "fast food" industry. In fact, 63% of companies that franchise are not in the food services at all, and 83% are not in fast food.[3] 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.



[1] Franchiseeconomy.com (2021).

[2] The Value of Franchising. Oxford Economics (2021)

[3] FRANdata research. (2021).

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."[4] The other is that franchising is usually undertaken in situations where the franchisee is physically removed from the franchisor, giving autonomy to the franchisee to run their own day-to-day business operations. 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-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 operational processes and systems 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.

Overcoming challenges of COVID-19

Originally from the state of Iowa, I grew up on a farm. Like many, I found franchising a pathway to build a new life that my wife and I could pass onto our children. Our business is now a second-generation business and is impacting four generations of our family and up to three generations of our employees' families.

The COVID-19 pandemic battered small businesses in historic ways. From March 2020-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. We had to permanently shut down four of our Great Clips salons. Our employees are part of our family, and while not an ideal circumstance, we had to furlough our staff. At a time of such crisis, we held daily check-in calls with our staff providing them constant updates of their potential return to work. To further ensure our commitment to our working family, we continued to provide health insurance to our entire staff despite our business doors being shut down.

Being part of a franchise system helped us navigate the pandemic immensely. In franchising we say, "you go into business for yourself, but not by yourself." In a time of great need, other franchisees of Great Clips and The Joint Chiropractic would stay connected regularly to share best practices and brainstorm ideas on how to best approach government assisted programs like the Economic Injury

[4] Kevin M. Shelley & Susan H. Morton, "Control" in Franchising and the Common Law, 19 Fran. L. J. 119, 121 (1999-2000)

Disaster Loans (EIDL) and the Paycheck Protection Program (PPP) loans. In addition to franchisee communications, we had significant support from our franchisors. Each brand hosted weekly webinars to assist with operations, including setting up Personal Protective Equipment (PPE) and the then-current salon guidelines per the recommendations of the Center for Disease Control (CDC). Our brands also cut down on franchisee fees so we were able to focus on more health precautions and safety for our employees and customers.

While we are on a path to recovery from the devastating effects of the pandemic, we still have a long way to go.

Occupational Licensing and Barriers to Career Growth

Today, our second-generation family business employs over 220 employees. We offer top wages and exceptional benefits in comparison to non-franchised businesses in our area. We also offer our employees an opportunity to pursue education at cosmetology schools, but Iowa is a challenging state. The cosmetology industry is an area that is struggling the most to meet the mounting increase in occupational licensing requirements and regulations. Hair salon franchises are constantly juggling the inconsistency in occupational licensing requirements in each state. For example, a hair stylist in New York state is required to partake in 1,000 hours of a cosmetology curriculum before a franchise owner in New York state can hire them. On the other hand, a hair stylist in Iowa, is required to take a 2,100-hour cosmetology course. With rising inflation, the cost of education continues to rise and puts an added burden on our employees that are seeking to progress in their franchise career.

Another barrier to entry is the cost of cosmetology school and the amount of student loan debt that aggregates. Stylists in New York pay an average of about $14,000 for tuition and supplies plus living expenses to put themselves through the 1,000-hour cosmetology curriculum. The longer the program requires, the higher the cost of the school and the higher the federal student debt load. On the opposite end of the spectrum, and country, cosmetology licensing in Iowa requires 2,100 hours. That is more than double the required hours for New York, which could more than double the cost to become licensed in Iowa or one of the other states that require 2,000 or more hours for licensure. Understandably, longer curriculums create greater financial risk for students and this expensive financial decision potentially removes an entire sector of our working population from pursing a fulfilling career.

IFA proposes three main solutions to make the occupational license process more manageable for employees: 1) we encourage greater license portability, 2) we support state measures that lower requirements to 1,000 hours of pre-license education, and 3) we suggest that states implement pre-graduate testing.

The state of the franchise business economic recovery

While the pandemic affected nearly all small businesses, the Small Business Administration (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.[5]

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, which helped keep our businesses afloat.

Coming out of the pandemic, franchising experienced an explosion of growth in 2021, following by period of moderation in 2022 that will continue through 2023. Economic headwinds such as high inflation, labor shortages, and supply chain issues brought on by the pandemic continue to challenge franchised businesses. .

However, the economic uncertainty initiated by the COVID-19 pandemic has highlighted the many benefits of the franchise business model. For example, according to the IFA/FRANdata 2022 Franchisee Inflation Survey, 50% of franchisees said they were better able to navigate inflationary pressures and other pandemic-era business challenges thanks to the support of their franchising network.

In 2023 and beyond, the economy will rely on franchised businesses to steer the ongoing economic recovery, boost consumer confidence, and improve sentiment among small business owners. Because of its unique business model, franchising can serve as an economic catalyst in states and communities. For example, as the labor market slows in 2023, leading to an potential increase in job losses and unemployment rates, franchising can offer retrenched workers at all levels an alternative avenue to re-enter the workforce. Additionally, franchising gives many people a chance to own and operate a successful business that adds jobs across the economic spectrum. Franchises also offer a supportive environment where first-time business owners can benefit from established systems, branding, and insights from more experienced franchisees.

In 2022, an estimated 790,492 franchised businesses delivered products and services to customers in the United States. The year-over-year growth rate from 2021 to 2022 was approximately 2%, which is faster than most historical growth rates. The growth in units in 2022 was supported by increased consumer spending, a strong labor market, and healthy financial institutions. However, economic headwinds including labor shortages and high inflation beginning in the second half of 2022 impacted the growth in franchised units. Inflation drastically increased the cost of opening new business units in 2022. When coupled with high interest costs, the cost of investing in a franchising unit increased by almost 30% in certain instances. Because lenders have now adopted a cautious stance in which they vet each investment opportunity in more detail than ever before, the time to underwrite a new loan has increased. Considering the tight monetary and fiscal environment, FRANdata projects that franchised establishments will grow by 1.9% in 2023 to reach the total of 805,436 franchised units.

The personal services industry boasts some of the fastest growing categories, including health and fitness centers, beauty-related studios, and home health care. According to the latest “Occupational Outlook Handbook” published by BLS, the personal care and service occupation is expected to grow 14% over the next few years, with approximately 762,600 openings per year. This growth exceeds the average for all occupations, and employment statistics imply a large demand for this industry.

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[5] Daniel Wilmoth, The Effects of the COVID-19 Pandemic on Small Businesses. U.S. Small Business Administration (2021).

According to FRANdata's New Concept Reports published last year, more personal services brands have emerged, with an increased distribution seen across all new concepts from the first quarter to the fourth quarter. Alongside QSRs, the personal services industry also has more projected units for 2023 than any other industry.

In 2023, FRANdata forecasts that personal services will continue to lead franchising expansion, experiencing the highest growth both in the number of establishments and outputs. These establishments are predicted to increase by 2.5% to 120,302 locations, while outputs are expected to grow by 6.7% to $42.1 billion. This industry grows as consumers' health needs increase, and there is an increased demand for home healthcare, fitness centers, and beauty services. Notably, this industry will become more competitive compared with other industries as more new players enter the market. On the other hand, while the consumer confidence index did not decline at the end of 2022, people are likely to be more cautious about what they need to buy in 2023, which may impact growth.

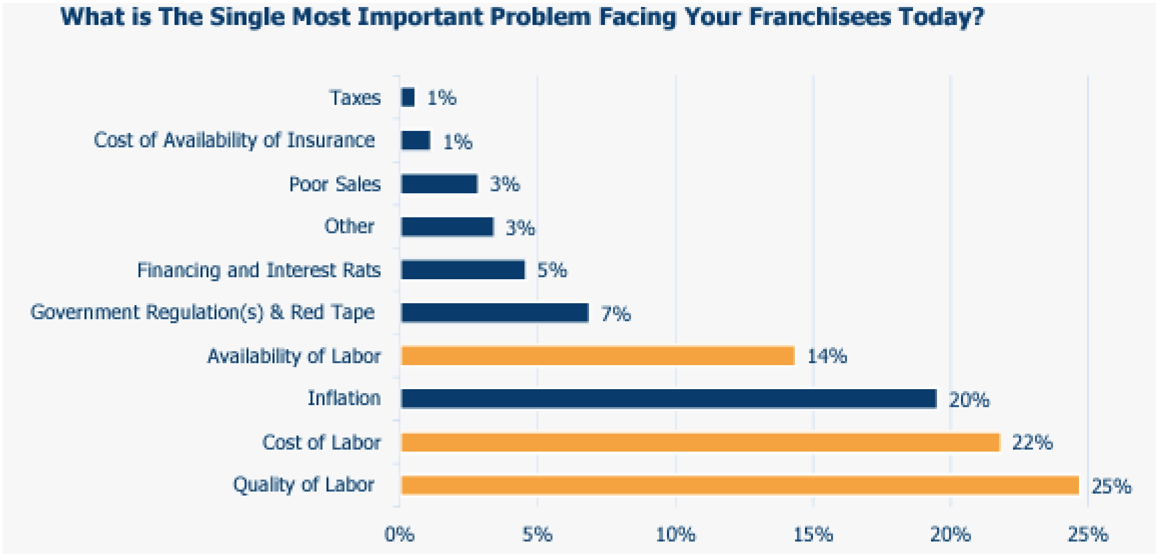
In addition, the personal services sector will deliver about 577,450 jobs to the franchising market. As this industry is highly reliant on skilled labor, the ability of personal service owners to retain their current employees becomes even more important during labor shortages.

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 has contributed to 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.[6]

Labor continues to be top issue for franchising

The robust recovery of the labor market in 2021 continued to hold strong in the year 2022. According to the U.S. Bureau of Labor Statistics (BLS), the unemployment rate edged down to 3.5%, one of the lowest in history. Demand for labor far exceeded the supply, resulting in a wage growth of 9.0% in 2022. The wage growth tapered down in the fourth quarter of 2022 to 6.4%. ADP Research projects wage growth in 2023 of approximately 3%, which is higher than pre-pandemic norms. Quality and cost of workforce remains the biggest challenge for almost all franchised businesses. According to the IFA/FRANdata 2023 labor survey of franchisors and franchise portfolio companies, 81% of franchised brands experienced constrained growth due to labor challenges, a continuation from 2022. Nearly identical to last year, 87% of franchisees have had difficulty filling in positions for unskilled labor, skilled labor, or both (88% in 2022).

[6] FRANdata research (2021).



In 2023, the franchise labor market will be even more competitive than it was in 2022. According to the IFA/FRANdata 2023 labor study, 85% of the franchisors surveyed reported an increase in store-level wages in the past six months, and 43% of franchised businesses reported benefit increases. Almost 60% of the franchisors surveyed anticipate an increase in labor wages in the next six months. FRANdata expects that the rebalancing of the labor market will likely take some time, and franchisees will continue to face labor related challenges at least in the first half of 2023.

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

Policies setting back economic growth

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 once again facing this bill. It is incredibly disheartening to small business owners that this legislation has been reintroduced in both the U.S. House of Representatives and the U.S. Senate.

The PRO Act puts the very existence of franchise businesses in jeopardy. It cobbles together more than 50 imbalanced amendments to the National Labor Relations Act which are designed to tip the scales against small businesses. 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. Franchising 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, and two provisions stand out as exponentially worse than the rest for franchising.

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. Moreover, it risks wiping away the equity that I have spent my life and career building in my businesses and ultimately makes me a middle manager of my brand.

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 (NLRB) 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. Today, the NLRB is well on its way to issue a final rule on a joint employer standard that would reverse its course back to the harmful 2015 version.

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 those workers 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 they really are. This would eliminate the path to entrepreneurship 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 costs 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.

Without a doubt, these seismic shifts in employment policy would hurt small businesses and provide fewer opportunities, particularly for women, minorities, and other underrepresented communities. 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 business 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 limiting economic opportunities available to them. It would harm franchise employees through a sudden change of their places of work away from uniquely crafted 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.

In contrast, legislation such as the Save Local Business Act would help franchise small businesses tap into their potential to be an economic power engine and further assist the workforce issue. This important piece of legislation would keep the hard earned equity of business owners like myself invested into their stores, community, and workers.

Conclusion

Franchise businesses contribute significantly to our nation's economy, creating a diverse range of employment opportunities from entry-level positions to management roles. By offering these opportunities, franchises help address unemployment and underemployment, ensuring that individuals across our nation have access to stable, fulfilling work.

Moreover, franchise businesses often provide comprehensive education and support for their employees, fostering the development of a skilled workforce. These workforce development programs not only benefit individual businesses but also contribute to the overall strength of our nation's workforce, making it more competitive on the global stage.

Another key aspect of franchise businesses is their ability to support aspiring entrepreneurs. By offering a platform for individuals to become small business owners with lower risks than starting a business from scratch, franchises encourage entrepreneurship, which in turn creates more jobs and enhances local economies.

Franchise businesses also offer unparalleled opportunities for people of color, women, and veteran entrepreneurs, promoting a more inclusive and diverse business landscape. This diversity strengthens our workforce and helps create a more equitable and prosperous society.

It is also important to acknowledge the role franchise businesses play in community engagement. Most franchises invest in their communities by engaging in charitable activities and supporting local organizations. This not only creates an environment where people can thrive but also contributes to a more robust workforce.

Franchise businesses have played a critical role in our nation's recovery from the economic impacts of the COVID-19 pandemic. As job creators and economic drivers, franchises can help revitalize local economies, generate employment opportunities, and support the overall recovery of our workforce.

My deep concern about the proposed PRO Act and its consequences cannot be overstated. The legislation threatens to undermine the very foundation upon which franchise businesses are built, potentially devastating the livelihoods of thousands of franchisees, and jeopardizing the future of our workforce. For franchisees like myself, the impact could be catastrophic, not only affecting our businesses but also the communities we serve and the employees who depend on us for their livelihoods.

In conclusion, franchise businesses possess the unique ability to address the workforce challenges faced by our nation. It is vital that the House Education & Labor Committee considers policies that support and encourage the growth of franchise businesses while carefully assessing the potential implications of legislation like the PRO Act. By doing so, we can ensure the development of a strong, skilled, and diverse workforce that can drive our nation's economy forward.

Thank you Madam Chair, for holding this hearing and for the invitation to speak on behalf of small business owners everywhere. I look forward to answering any questions you may have.