

Testimony of Vinay Patel
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Before the House Committee on Small Business
Subcommittee on Investigations, Oversight and Regulations

“Risky Business: Effects of New Joint Employer Standards for Small Firms”

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I. Introduction

Chairman Hardy, Ranking Member Adams, Congressman Knight and Members of the Committee, I would like to thank you for the opportunity to testify before you today and to share with you my experiences as a small business owner, entrepreneur and job creator. I look forward to a constructive discussion about how the new joint employer standard created by the National Labor Relations Board (NLRB) and the permeations of this new regime across various government agencies will dramatically affect my business, my employees and our ability to continue to provide top service in the hospitality industry.

My name is Vinay Patel, I am first generation American and proud small business owner from Herndon, Virginia. I am appearing today not only as a hotelier, but also as volunteer board member of the Asian American Hotel Owners Association (AAHOA). AAHOA represents more than 15,000 small business owners who own over 20,000 properties amounting to nearly 50% of all hotels in the United States. Our members employ more than 600,000 American workers and account for nearly \$10 billion in payroll annually.

AAHOA is also a member of the Coalition to Save Local Businesses (CSLB), which is a diverse group of locally owned, independent small businesses, associations and organizations dedicated to protecting all sectors of small business and preserving the traditional joint employer legal standard at the federal and state levels.

My story is like that of thousands of first and second generation Americans and entrepreneurs from all across the country. Over the last three decades, my family and I have spent our careers developing a livelihood as hotel owners and operators. Our company has enjoyed significant growth recently; however, our success is the result of years of sacrifice, hard work and relentless dedication to our family and to our business.

I was born in Malawi, Africa, to parents who emigrated there from India. Entrepreneurship has always been a calling for my family. In Malawi, my father operated a small hardware store before political unrest forced us to leave. In 1980, we came to Greensboro, North Carolina, and lived with family members who were in the hotel business. We learned what we could from them and eventually set out to run our own property. My family settled in Richmond, Virginia, and we not only owned and operated the twenty-seven room Royal Inn Motel, but we also lived at the property. Operating any hotel, even a small one, is a twenty-four hour-a-day business. At that time, my parents, brother and I comprised the entire staff. We served the front desk, cleaned rooms, maintained the property, and accounted for all of the marketing and financial planning. I learned the most important lessons in my life, of hard work, commitment to family and community service, during these formative years. While most kids played sports, or learned music in high school, my brother and I were responsible for running our motel during nights and on weekends.

In 1992, I began college at Virginia Commonwealth University, as a commuting student, so I could continue to help with the family business while I was pursuing my degree. After graduation, we built a second property from the ground up, a fifteen room motel on the other side of Richmond, that we also called the Royal Inn. By then, I was married, and my wife Tina and I were now the

sole operators of a new business. For two years, we did nothing but run every aspect of the hotel, from housekeeping, maintenance, guest services and ultimately business planning.

With this tremendous firsthand experience in the lodging business, I decided it was time to take an even greater risk in an effort to grow the company and create a better life for my family. I began to look for opportunities to expand our operations from independent motels, to franchised properties that came with the advantages of a national brand. While my ambitions were high, so too were the hurdles. I found a parcel of land in Stafford, Virginia, and laid plans to build a fifty-five room hotel, with the idea of raising a franchise flag. However, brand after brand turned me down. Most brands will only accept franchisees who have demonstrated a successful and profitable history in the business. My experiences at the Royal Inn were not significant enough for brands to take a chance on me. In some cases, brands would not even come out to the property to see our plans, so we even created a video proposal to show them how we intended to proceed.

After suffering many demoralizing defeats in my attempt to open a franchised hotel, I was fortunate to find the right partner. While I was seeking to open a new property, Country Inn was seeking to expand on the East Coast. We ultimately came to an agreement and I opened the first Country Inn in the Commonwealth of Virginia in 1995. Here too, my wife, kids and I lived on the property and attended to every aspect of the business to save money and to ensure the best customer service. My wife was the head of housekeeping, maintenance and operations and I was the general manager. Two years later, we sold the property and sought additional opportunities to expand the business.

In 1999, we found a larger market and built a Country Inn near Dulles International Airport, and the success of these businesses has allowed us to grow considerably over the past nearly two decades. Our experiences in learning every aspect of the business, from the ground up, provided the discipline to expand at a reasonable pace and to survive the recession, which hit the hospitality industry particularly hard. Now, our company, Fairbook Hotels, owns eleven hotels in Maryland and Virginia, and we work with several franchise brands including Carlson, Hilton, Wyndham and Choice hotels. We are also proud to employ over 150 employees from the local communities.

The single most important aspect of our business is human capital. Our associates are what make us great. We care about our employees and are committed to helping them realize their full potential, knowing that the needs of the company are best met by meeting the needs of our people. We feel that the dedication to our associates will bring us loyalty from our guests, our financial stakeholders and the communities in which we live and serve.

It is for this reason the new standard by which to determine employer liability set by the National Labor Relations Board and subsequently adopted by additional administrative agencies is particularly disturbing. I have explained my family's history in the hotel industry in great detail in this testimony to illustrate how incredibly difficult it is for an entrepreneur and an immigrant to succeed as a small businessman. Therefore, I am alarmed by the reckless actions of the NLRB to begin this destructive regime and now the Department of Labor (DOL) to expand upon it. I have no doubt that forging this path to regulate business relationships will dismantle the franchise model, foreclose entrepreneurship opportunities for small businesses and transform franchisees into managers and employees from independent owners and operators.

II. Franchising in the Lodging Industry

Having owned and operated two unbranded properties to start my career, I thoughtfully considered the best opportunities to grow my business. Unquestionably, franchising provided the best business model to expand our operations and in doing so, we have created hundreds of great jobs and invested in the local communities our hotels serve.

Having read the directives by the NLRB and the DOL, I am convinced that the bureaucrats who are creating these mandates have never run a business and clearly do not understand the franchise model. If they had, they would understand it is inconceivable to conflate a franchisee with a franchisor, from any perspective.

As a franchisee, I am responsible to pay a licensing fee and royalties from the top line. In return, I receive the benefits of displaying a nationally recognized sign at my property, take advantage of a wide-reaching marketing campaign and frontline reservations software to ensure efficiencies in running my business and a user-friendly platform for our customers to book rooms.

Most importantly however, I continue to own and operate my own small business. I am responsible for taking all of the financial and career risks involved with starting, maintaining and growing the business. I am responsible to secure financing for the endeavor and the capital to furnish the property. Ultimately, it is my livelihood that is tied to the success or failure of the enterprise, not that of some large corporation.

Moreover, when choosing how best to grow, I embrace competition and will always seek the best deal for my business interests. It is for this reason, I am not beholden to working exclusively with one brand, or one franchisor. I will review the market in which I have interest and study the type of properties most likely to succeed. Subsequently, I will reach out to the particular franchisor to apply for a license. Once we have agreed, we will sign a franchise agreement that outlines our mutual obligations.

As the hotelier, I am solely responsible for the daily operations of the business. My interactions and my staff's interactions with brand representatives are quite infrequent and limited to ensuring the quality standards set for the nationally recognized product remain consistent from one property to the next. In no way does the brand direct the responsibilities or functions of my employees. As their employer, it is my responsibility to establish working conditions including duties, wages, benefits, promotions, discipline and accommodating for workers' needs and personal situations.

I am also proud of my record not only as a successful entrepreneur, but also as a successful job creator and employer. With every hotel we buy or build, we create good American jobs. Not only for those employees who come to work in my hotels, but also in many secondary industries like architecture, interior design and construction.

For those employees who come to work in our hotels, we value building long term relationships and developing successful hospitality professionals. In the lodging industry, competition is ubiquitous. In order to set our properties apart and to create return customers, we must provide

exceptional customer service. To accomplish this, we must have associates and employees who are passionate about their work and enjoy working for our company. We take great pride in compensating our workers well and creating an environment in which our employees have every opportunity to advance. There are many examples at our properties where housekeepers have ascended to lead their departments, or desk attendants have become general managers. The lodging industry is unique in its position to create advancement opportunities and provide a platform for workers to develop and enhance their professional skills through varied responsibilities.

The franchise business model is the most effective and efficient vehicle for small business ownership within the lodging industry and in countless other sectors across the country. Changes in this model will undeniably discourage entrepreneurship and create considerable uncertainty between employers and employees across the industry.

III. The New Joint Employer Standard

Under the previous standard of employer liability that existed for more than thirty years, an employer was determined by the control he had over the working conditions of his employees. This standard was simple, clear and certain. Employers and employees came to depend on this understanding to concisely define our relationship.

Under the new standards sought and created by the NLRB, franchisors may be subject to liability based on the actions or inactions of franchisees. As a business owner, I am extremely confident in my ability to run my business; however, as I have experienced throughout my career, franchisors are particularly risk averse and will not simply accept additional liability. Instead, they will likely choose only to work with few, large franchisees and foreclose new opportunities for small business owners like me, in an effort to mitigate liability from a lesser established business partner. They will also have no choice but to exert control over the daily operations of my businesses under our existing contracts. In doing so, I would cease to be an independent small business owner and I would be subject to the directives of a faceless corporation – ultimately, I would become a de facto employee of the corporate brand.

Worse and most threatening to my business however, is the recent absurd characterization of employer liability from the Department of Labor. In the Wage and Hour Division (WHD) Administrator's Interpretation (AI) No. 2016-1, the DOL discounts the importance of employer status being defined by the direct control over working conditions and instead seeks to create a regime based on an ambiguous standard of "economic realities," that is fabricated on twisted logic and a mangled understanding of reality.

In the AI, the WHD Administrator directly and unabashedly takes aim at the hospitality industry in general and the hotel business specifically. In the first footnote, the AI putatively determines the existence of joint employer status within the hotel businesses simply because employees may wear shirts bearing the name of a national brand. As I explained earlier, the license agreement I sign with a brand permits me to use a brand name as a marketing tool to attract customers to a nationally recognized product or program. Ultimately, I employ my employees and I am the one who signs the front of their paycheck, regardless of what logo is embroidered on an employee's

shirt. In my experience, there is no circumstance in which the national brand dictates the tasks performed by my employees – yet the WHD Administrator is keen to grossly oversimplify the nature of my business.

It is critical to understand that, in our company, we have a very positive and collaborative working environment. This means we compensate our employees well and can accommodate for their specific needs. Because of this personal connection, I am in a position to understand an employee's individual circumstances and provide flexibility in compensation, scheduling, responsibilities and opportunities for advancement. I fear this flexibility will disappear if franchisors were forced to take control over the daily operations and staffing decisions became subject to a rigid standardized formula from the corporate headquarters.

The WHD Administrator and AI further denigrate tens of thousands of hardworking small business owners by dismissing all of the efforts necessary to create a business and develop a workforce in designating us as mere “intermediaries” between employees and another corporate entity. This characterization implies hoteliers are already essentially employees of the corporate brand. I assure you, the struggles my family have endured and challenges we have overcome are those of entrepreneurs, business owners and employers – titles we wear with pride.

I also understand that the witch hunt for joint employers does not end at the NLRB, or Department of Labor, but rather there may be a concerted effort by other federal administrative agencies, like the Occupational Safety and Health Administration (OSHA) to develop liability for franchisors based on health and safety inspections of franchisees. The collusion between agencies to impute legal obligations onto franchisors will only drive a wedge into our industry and create difficulty for me to operate my business.

Frankly, if these burdensome circumstances existed when I entered the business, I likely would have chosen another avenue for entrepreneurship. The intrusion by bureaucrats in Washington, DC, threatens my ability to own and operate my business, to create and maintain good jobs and the stability of the franchise business model across the United States.

For more than thirty years, my family and I have built a successful business as entrepreneurs, and over the course of a few short months, government officials at the NLRB, DOL and OSHA have created a regulatory mechanism to destroy our way of life.

IV. Conclusion

Chairman Hardy, Ranking Member Adams and distinguished members of the Committee, I thank you for the opportunity to speak with you today and for your highlighting this escalating attack on entrepreneurs and small business owners.

The NLRB's new joint employer standard and subsequent cases before the Board have and will undoubtedly affect how independent business owners and operators interact with our employees and business partners. I fear the new standard will create conditions of liability unsustainable for franchisors and they will ultimately take control over the employment decisions and daily operations of franchised businesses.

In an apparent effort to expedite this process, the DOL and other agencies have created a new standard of joint employment based on manufactured jargon, artificial business models and guidelines that lack any semblance of consistency or certainty. These actions undermine the ability for entrepreneurs like me to grow our businesses, create sustainable, local jobs and invest in our communities.

I urge this committee to investigate the motivations behind this coordinated assault on small business and to pass legislation that will reestablish the traditional joint employer standard that has allowed my family and me to realize the American Dream of small business ownership.

Thank you.