



Key Vote

March 08, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington DC 20515

Dear Speaker Pelosi and Republican Leader McCarthy:

On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I write to express our strong opposition to the Protecting the Right to Organize (PRO) Act (H.R. 842). Plainly stated, this legislation would eradicate the franchise business model, and due to the fundamental importance of this legislation to the franchise community, we designate H.R. 842 as a **KEY VOTE**.

As you know, franchise businesses are independently and locally owned. The franchise business model, by which an established brand licenses its name, products and processes to an independent owner, has proven to be a resilient and mutually beneficial driver of economic opportunity for owners, employees, and brands. The pandemic has hit franchise businesses extremely hard. Within the first six months after the COVID-19 outbreak, an estimated 32,700 franchised businesses closed as of August 2020; 21,834 businesses were temporarily closed, while 10,875 businesses were permanently closed.

If Congress does no harm, franchise businesses 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. Now franchising is poised to rebound; a February 2021 report from market research firm FRANdata revealed that more than 26,000 franchised business locations and nearly 800,000 franchise jobs will be created in 2021. 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 the total U.S. employment.

Franchises also play an outsized role in generating wealth creation for minority communities, especially those who have been left unbanked or underbanked during the pandemic. Minorities have too frequently been denied equal opportunity in business, but franchising has helped thousands of our entrepreneurs overcome common societal obstacles. Over 30% of franchises are minority-owned, compared to 18% of non-franchised businesses. Rather than hinder the ability of new entrepreneurs to generate wealth and support their local communities, Congress should strongly support the franchise business model.

Therefore, we strongly urge Congress to avoid major legislative changes like the PRO Act that would severely disrupt the franchise business model and impede new business formation and job growth during the economic recovery. Polarizing policy proposals, such as an expanded standard for joint employer and the "ABC" independent contractor test, which would coerce broad unionization across franchised systems to the point that franchisees would be treated as employees, would hamper the economic recovery.

Specifically, the legislation would codify the vague and unlimited standard for joint employment that was adopted in 2015 by the National Labor Relations Board in its Browning-Ferris Industries decision. As IFA's members have testified numerous times, the legal uncertainty created by the expanded joint

employment standard had a chilling effect on the franchise business model. That expanded joint employer standard cost franchise businesses \$33.3 billion per year, resulted in 376,000 lost job opportunities, and led to 93% more lawsuits. Our members sought expensive counsel to determine if simple decisions – like compiling a brand-wide employee handbook or offering franchisees software to track job applications – might put them in legal jeopardy. Notably, the vague joint employer standard also puts at risk workforce development and apprenticeship training programs that make franchised-companies attractive to entrepreneurs. Many businesses will step away from offering these crucial benefits rather than take the risk of such an action triggering a joint employer lawsuit.

Likewise, the IFA also has strong concerns with the PRO Act’s codification of California’s new “ABC” test for determining independent contractor status which was adopted in *Dynamex Operations West v. Superior Court*. Under prong “B” of the ABC test, an entity must perform work that is “outside the usual course of the hiring entity’s business” to be considered an independent business. Because brand owners license their trademark to local owners who operate their own business, they may be determined to be in the same line of business as the franchisor, and would thus fail the ABC test. Such a determination would deprive local franchisees of their life investments and business operations. The application of *Dynamex* to the franchise business model would have the detrimental impact of turning every franchise owner into a de-facto employee of the brand.

Bottom line, 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 a limiting of economic opportunities available to them. It would harm franchise employees through a sudden change of their places of work away from their 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.

IFA stands ready to collaborate with you on finding policies that will better support workers and employers. We support efforts that encourage brands to share information and best practices with franchise owners on COVID-19 safety measures and employee education. Thus, rather than considering the PRO Act, which would dramatically change liability rules during a small business economic recovery, Congress should be proactively finding ways to encourage businesses to engage in important corporate social responsibility activities and develop apprenticeship training programs by providing a safe harbor for these practices from additional liability.

For these reasons, IFA urges strong opposition to H.R. 842. If enacted, the PRO Act will have a negative impact on both the future livelihoods of hundreds of thousands of franchise small business owners and wealth accumulation for families across the country. Thank you for considering our views.

Sincerely,



Matthew A. Haller
Senior Vice President Government Relations & Public Affairs
International Franchise Association

cc: Members of the U.S. House of Representatives