INTERNATIONAL FRANCHISE ASSOCIATION

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July 24, 2019

The Honorable Frederica Wilson
Chair, Subcommittee on Health,
Employment, Labor, and Pensions
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Tim Walberg
Ranking Member, Subcommittee on Health,
Employment, Labor, and Pensions
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Wilson, Ranking Member Walberg, and Members of the Subcommittee:

On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I write to express our strong concerns and opposition to the *Protecting the Right to Organize (PRO) Act* (H.R. 2474). Plainly stated, this legislation would eradicate the franchise business model, which is comprised over 733,000 establishments that employ over 7 million individuals and contribute $674.4 billion of economic output to the U.S. economy.

Franchising is based on the principle that every franchisee owns and operates his or her own business and is independently responsible for their decisions, including the opportunity to retain business-related profits. Each franchise brand involves both a franchisor and a network of franchisees. Franchisees – the individual business owners – must secure a license from the franchisor, or parent brand, to own and operate a business using that brand's identity. The franchisor provides support for the brand, including standards regarding quality and uniformity, as well as brand-related investments such as national advertising, but the business owner is responsible for his or her own business, particularly hiring, firing, scheduling, and maintenance.

Specifically, the PRO Act seeks to codify the vague and unlimited standard for joint employment that was adopted in 2015 by the National Labor Relations Board in *Browning-Ferris Industries*. As IFA's members have testified numerous times, the legal uncertainty created by the expanded joint employment standard has had a chilling effect on the franchise business model. Our members have 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.

We also note our 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 the trademark of the franchisor to operate their own business, they are undeniably in the same line of business as the franchisor and would fail the ABC test. The application of *Dynamex* to the franchise business model would have the detrimental impact of making every franchise owner an employee of the franchisor.

For these reasons, IFA urges strong opposition to H.R. 2474. If enacted, the PRO Act will have a negative impact on entrepreneurship, small business growth, and wealth accumulation for families. Thank you for considering our views.

Sincerely,

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