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October 3, 2017

Members of the U.S. House of Representatives Education and the Workforce Committee,

The National Franchisee Association (NFA) writes in support of H.R. 3441, the Save Local Business Act, and asks committee members to support this bipartisan legislation as it continues to move through the legislative process. NFA believes this bill will help clarify the franchisor/franchisee relationship and commends Representative Bradley Byrne for his leadership on this issue

By way of background, NFA is the national trade association representing BURGER KING® franchisees in the United States and Canada who operate more than 7,000 small businesses and employ almost 200,000 individuals across North America. We work jointly with BURGER KING® Corporation as well as our suppliers and vendors to promote growth, create jobs and invest in our communities.

In 2015, the National Labor Relations Board (NLRB) overruled more than 30 years of bipartisan precedent when issuing its decision in Browning-Ferris Industries of California Inc (BFI). In doing so, the board replaced the requirement of a clear "direct and immediate control" standard for determining joint liability between franchisors and franchisees with a new test based on "indirect" and "potential" control standard. This decision exposed both franchisors and franchisees to increased workplace liability and continues to jeopardize the franchise model. Since the BFI ruling, dozens of cases have been filed and several rulings have been made that incorrectly determine franchisors and franchisees as "joint employers." Additionally, many franchisors have reacted by withdrawing their training and resource programs so as not to appear "in control"; several franchisors are also encouraging massive consolidation within their franchisee community such that only those with more resources to support defending the new joint employer definition will survive.

The Save Local Business Act restores the joint employer standard to its earlier standard, requiring franchisors and franchisees to exercise direct control over employees in order to be considered jointly liable. The legislation amends both the National Labor Relations Act and the Fair Labor Standards Act so that the law is clear and uniformly applied. Until this law is passed, franchisees will face the daily threat of increased lawsuits, lack of franchisor support and massive consolidation. A permanent fix – such as that contained in the Save Local Business Act – is needed to preserve the integrity of the franchise model.

On behalf of BURGER KING® franchisees across the country, thank you for your consideration of this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Herridge', is written over a light blue horizontal line.

VP, Legislative Affairs  
(202) 416-0270