

Testimony of Kalpesh “Kal” Patel
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Before the House Committee on Education and the Workforce
Health, Education, Labor & Pensions Subcommittee

“Redefining ‘Employer’ and the Impact on Georgia’s Workers
and Small Business Owners”

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I. Introduction

Chairman Roe, Congressman Carter and Congressman Allen, I would like to thank you and the members of the Subcommittee on Health, Education, Labor & Pensions, for affording me the opportunity to testify at this hearing today. I look forward to sharing my story of entrepreneurship and the American Dream and answering any questions you may have about the tremendous success of the franchise business model in the lodging industry.

My name is Kal Patel and I am a small business owner from Pooler, Georgia, and the president and CEO of Image Hotels. I am second generation hotel owner, or “hotelier” and I am proud to continue in the family business.

My family emigrated from India to the United States in 1979 in order to pursue opportunities for entrepreneurship and to improve our station in life. We arrived at my aunt’s home in Bennettsville, South Carolina, and lived with her for a year while learning the hotel business and saving money to start out on our own.

My parents bought their first property, the “North Augusta Motel,” a twelve room independent motel and worked every job within in the property to ensure our investment and our livelihood were successful. From there, we moved to Kentucky, where my parents bought their first franchised property, the Red Carpet Inn, a fifty room hotel and our first experience with franchising. Franchising provided the consistency of customers, security of a national brand, a larger market share, and tools and resources to help us succeed in growing our business.

While I was growing up, the hotel was not only our family business, it was our way of life. I learned important life lessons about the value of hard work and community service while I was making beds, cleaning bathrooms, taking out trash and maintaining the upkeep on the property. Soon, as a teenager, I was learning the financial and managerial aspects of the business and I became a more active participant in running the operations of our hotel and seeking opportunities for the development of additional properties.

At seventeen years old, I started Image Hotels to consolidate our operations and secured an SBA 504 loan to develop my first property – a fifty room Ramada Inn in Port Wentworth, Georgia. I am proud to be a lifelong entrepreneur and job creator and I am grateful for the opportunities my family and I have had to be small business owners.

Today, we own eight hotels throughout southeast Georgia, including Marriott, Hilton, Hyatt and Wyndham and Choice branded properties, where we employ 275 hardworking Georgians.

Throughout my life and career, I have seen first-hand, the benefit of the franchise business model to the small business owners – the franchisees. As markets and tastes changed and evolved, and communications became more extensive, customers began to demand the familiarity of a brand name, especially in their lodging preferences. Franchising provided my family and me the opportunity to own and operate our own businesses, while benefiting from the resources available to a national brand.

Franchising is the preferred model in the lodging industry because it allows hoteliers to control our own businesses. I evaluate where to build and determine what type of property will be successful in a given market. I secure the financing and undertake the multi-million dollar risk in investing in the real estate, capital and human resources necessary to operate a successful hotel. I am also the decision maker at my hotels regarding staffing decisions and employee relations. Ultimately, I enjoy the challenge of running my company and seeking opportunities for growth and development.

It is for that reason I am here today to discuss the overwhelmingly negative impact a change in the “joint employer” legal standard for franchise business relationships will have on small businesses and our employees.

I would like to note that I am a past board member the Asian American Hotel Owners Association (AAHOA). AAHOA members own nearly 50% of all hotels in the United States and employ over 600,000 employees, accounting for nearly \$10 billion in payroll annually. Approximately 70% of the more than 20,000 properties AAHOA members own are franchised businesses. My story is nearly identical to those of the more than 14,000 small business-owner members of the association nationwide and the over 800 AAHOA members across Georgia.

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 current joint employer legal standard at the federal and state levels.

II. The Franchise Relationship

The franchise business model has been essential in creating entrepreneurship opportunities for hoteliers, thousands of whom are first and second generation Americans. I fear the prospects for business ownership would be significantly limited if franchising were no longer available to us.

The franchise model in the lodging industry can provide considerable benefits to franchisees and in many markets, affiliating with a nationally recognized brand can be the difference in determining whether or not a hotel can succeed. Moreover, the franchising model in its current form succeeds for hoteliers, because of the distinct responsibilities of franchisees and franchisors.

Hotelier-franchisees are responsible for identifying a suitable market, applying for a franchise license, securing financing, purchasing land, acquiring insurance, establishing agreements with contractors, passing health and safety inspections, setting prices, determining staffing needs, understanding local laws and regulations, undertaking all of the financial risk, and directly operating the business.

Further, it is the hotel owner and operator who controls staffing decisions. Hoteliers exclusively establish working conditions, staffing needs, wages, promotions, benefits, schedules, evaluation metrics, raises and disciplinary procedures.

For their part, my franchisors provide a support system for my business and offer me tools to succeed and ensure I maintain a minimum brand standard. However, aside from conversations with general managers and my sales team about industry news, condition of my properties and business prospects, brand representatives do not interact with my staff. And both the franchisee and franchisor prefer it that way. I meet formally with a brand representative one a year and otherwise, I am left alone to lead my staff and run my businesses as I see fit.

Franchisees also pay the franchisor a one-time license fee of between \$50,000 and \$125,000 for use of the “flag” or brand name. The franchisee also pays royalties of between 8-10% of the “top line,” or gross revenue.

In contrast, hotel franchisors accept franchise license applications, provide specifications for construction and design, develop and execute national marketing strategies, furnish software and services (such as point of sales systems and reservation portals), set menus for breakfasts, and generally offer guidance to ensure dependable brand quality.

These specific responsibilities are clearly defined in the franchise agreements I sign with each brand, for each hotel. It is this dependability that engenders confidence in both parties and allows the relationship to thrive – but in no way does the agreement create an agency expectation or diminish my independence as a business owner.

III. The Effect of a New Joint Employer Standard

As an hotelier, I have come to depend on the franchise model as the most advantageous means to small business ownership. Consequently, I am deeply concerned that the NLRB’s efforts to expand the definition of joint employer status will transfer control of small businesses from independent hotel owners and operators to large corporations. An expanded joint employer legal standard intimated by the NLRB would compel franchisors to take an active role in staffing decisions due to the newly manufactured potential for liability. Franchisees, including the majority of AAHOA members, would lose independence in decision making and would effectively become employees of the franchisor because they would be forced to follow someone else’s directives.

A new, essentially coerced partnership arrangement between franchisees and franchisors that would arise based on a new joint employer standard would devastate the industry, because the interests of both parties are particularly distinct. As franchisees, our interests are to ensure our individual properties are as successful as possible. That means growing, maintaining and developing a dedicated workforce. As hotel operators, intimately involved in the daily functions of the hotel, we know our staff members personally and understand their unique importance to the business. In contrast, because most franchisors are big companies with different goals and motives than I have, they value expenditures and investments differently than I do. And it is most likely that my employees and staffs may suffer if new standards impose a new management structure.

As I mentioned earlier, as the small business owner, I determine the staffing decisions, promotions, benefits, schedules and other working conditions based on what is best for my employees and my business. I live and work in the community and I have spent my entire life and career in this business – as a result, I know how to ensure top performance from my team.

Representatives from the brands who are based in Washington, DC, would certainly not understand the culture of our workplace and they would be unable to provide thoughtful input on incentives like promotions and raises or disciplinary actions, for example. However, the proposed new joint employer standard would insert them into the process and they would then have a disproportionate influence on these decisions.

Similarly, as franchisors spend more time and additional resources at my properties, they will likely insist on charging higher royalties and license fees to account for the increased costs and thus add financial burdens on my businesses. Accordingly, as brands are coerced into micromanaging my businesses, our contractual agreements outlining our responsibilities will undoubtedly be upset and potentially invalidated.

Succeeding at business is a monumental task unto itself. It takes years of learning, risk-taking, failing and perseverance to achieve one's goals. Adding exceedingly onerous obstacles and financial burdens on me, while simultaneously wresting my independence and control, creates a hostile climate for business and discourages me from participating in the industry, developing new properties and creating jobs.

What I struggle with most, is trying to understand the rationale of the NLRB and its General Counsel in seeking to upend a business model that has been exceptionally successful for decades. The NLRB's General Counsel has referred to franchising as an "outsourcing arrangement" where the franchisor "inserts an intermediary" and merely "designates" the title of "employer" onto the franchisee in an effort to evade bargaining with organized labor. This is an absurd and offensive characterization of the life and business my family and I have built over the past thirty six years.

If the NLRB rules to create a new joint employer standard by intentionally misrepresenting and trivializing the importance of business owners in creating good jobs for thousands of Georgians, developing a professional workforce and contributing to our local communities, it would truly be a travesty and egregious miscarriage of justice.

IV. Conclusion

Chairman Roe and members of the Committee, I urge you to investigate this issue thoroughly and keep my employees and my story in mind as you review administrative decisions affecting small business owners.

I encourage you and your colleagues to tour hotels in your districts and get to know the proprietors and employees who are eager to serve the guests who come to stay with them. I sincerely appreciate Congressman Carter taking time to visit our Double Tree by the Savannah Airport recently and experiencing firsthand the impact of the lodging industry and the franchise model on the lives of our team, our families and our community here in southeast Georgia.

I am grateful for the opportunity to speak with you today and to represent the thousands of small business owners and employees who have come to realize the American Dream as a result of working in a franchised small business – and I urge you to stand up for us and protect us from

oppressive government overreach from bureaucrats in Washington, DC, who do not understand our businesses, our communities or our way of life.

Thank you.