NCCR
NRF's CHAIN RESTAURANT DIVISION

Testimony of Jamie Richardson
Vice President, Government and Shareholder Relations and Assistant Secretary
White Castle System, Inc.
On behalf of the
National Council of Chain Restaurants
Before the Subcommittee on Workforce Protections
Education and the Workforce Committee
U.S. House of Representatives
June 10, 2015

Chairman Walberg, Ranking Member Wilson and members of the Subcommittee, thank you for the opportunity to be with you today to discuss the Fair Labor Standards Act (FLSA). I'm Jamie Richardson and I serve as Vice President, Government and Shareholder Relations at White Castle. I am pleased to be testifying on behalf of the National Council of Chain Restaurants (NCCR). NCCR is the leading trade association exclusively representing chain restaurant companies. For more than 40 years, NCCR has worked to advance sound public policy that best serves the interests of restaurant businesses and the millions of people they employ. NCCR members include the country's most-respected quick-service and table-service chains. NCCR is a division of the National Retail Federation, the world's largest retail trade group.

White Castle is a family owned business founded in 1921. From humble beginnings, we have had the opportunity to grow thoughtfully over the past 94 years, and today have 390 restaurants in 12 states, with 10,000 team members dedicated to "feeding the souls of craver generations everywhere" and "making memorable moments every day."

Our founder Billy Ingram had two key governing principles in growing the business: 1) happy employees make happy customers, and 2) we have no right to expect loyalty except from those to whom we are loyal.

These are principles that shape all we do to this day and why a strong notion of loyalty continues even now as the world changes around us. More than one in four of our 10,000 team members has been with us 10 years or more. The average tenure of our Restaurant General Managers is 21 years – and turnover for this key group last year was less than 6%. We were recently honored by industry research firm TDNK as the 2014 recipient of its coveted "Diamond Catalyst Award" in large part for our continued commitment to Billy's founding principle of putting people first. The award also acknowledged White Castle's commitment to diversity, noting that 33% of our restaurant General Managers are African American, and 77% of our restaurant General Managers are female. Our Castles truly have become a home for empowerment and opportunity for generations of individuals living in the neighborhoods where we do business.

Today, we are gathered to share thoughts on wage and hour protections and the Fair Labor Standards Act (FLSA). Interestingly, right about the time the FLSA was created, our founder Billy Ingram was working on a packaging innovation for our business. We had started "selling 'em by the sack" and found a slight problem in that the bottom of our sacks needed extra support. Billy created a small cardboard insert to provide more structure, and on these cards, he printed an image of a goose with a small story about making sure to do the right things in the right order - and not to punish those who were doing their part to create jobs and help our neighborhoods. Over the years, the specific message would change – always with the ending – "Don't kill the goose that lays the golden egg."

In many ways, that's the message we would like to share today. Let's never forget that the jobs we crave for our economy come from employers who benefit and survive over the long haul based on their commitment to do the right thing for their employees.

White Castle was 17 years old when the FLSA was enacted in 1938. Even then, White Castle was pioneering a notion of "enlightened management" before it was popular. For example, we began offering a health insurance benefit in 1924, our profit sharing and retirement benefits were pioneered in the late 1920's, and a holiday bonus initiated for all team members that has been paid every year since with the exception of the economic depression years of 1934 and 1935. In the 1930's, White Castle was already an "employer of choice" as an upstart innovator with our "wild experiment in the hamburger business." White Castle's company archives document our support for basic workforce protections – and alignment with the early spirit of the FLSA.

Our nation's economy and the labor force have changed significantly since the 1930's, so it comes as no surprise that a statute from 1938 and its accompanying regulations do not effectively mirror the needs of today's businesses and workforce. While few significant modifications have been made to the FLSA in recent years, there has been a major shift in the industries that drive employment opportunities, technology has transformed the workplace and job duties, and employees increasingly place a premium on workplace flexibility and work-life balance. The FLSA's current statutory and regulatory structure is ill-equipped to cope with these realities. The result is an outdated and complex framework in which employers and employees must operate, and the need to modernize a 1930's depression-era law for the 21st century economy has never been more important.

Today at White Castle we're looking forward to celebrating our 100th birthday in 2021 – and we have concerns about the relevancy of FLSA – especially in light of a regulatory regime that is increasingly proscriptive – and a regulatory regime that seems increasingly disconnected from the needs and desires of the modern worker and contemporary business owners.

Inherent in the original provisions of the law is acknowledgment of the dignity of the worker – and especially as the nation continued to work its way through the great depression – the uniquely enabling empowerment that a job provides. Today, with many of our urban centers continuing to suffer record high levels of unemployment – especially with at risk youth and for those who would benefit most from employment – regulatory actions go beyond providing protection for those employed and make it harder for employers everywhere to create more jobs.

In cities and neighborhoods where White Castle has a presence, youth unemployment is creating a "lost generation" of citizens who are missing the chance to land that first job – missing the chance to get their foot on that first rung of the ladder that leads to a more prosperous and fulfilling life. For example, according to the Bureau of Labor Statistics' 2013 annual average, the unemployment rate for youths ages 16-19 in the city of Chicago was 51%, in the city of Detroit, 38.5%, and in New York City, the rate was 26.9%.

One specific example about the relevancy of today's FLSA is especially concerning to restaurants and retailers. The Administration is soon expected to propose major changes to the FLSA overtime regulations which were last updated in 2004. Rather than providing more opportunities for individuals to earn overtime pay, it appears that the new regulations will only result in a more complicated law, requiring outside legal advice for small businesses, and more litigation.

In anticipation of these regulatory changes, NCCR's parent organization, the National Retail Federation, commissioned an Oxford Economics study to analyze the impacts of an increase in the salary threshold on the retail and restaurant industries. The "Rethinking Overtime" report demonstrates just how disruptive significant increases in the salary threshold would be on an American business model that creates jobs in every community across the country.

The report analyzed three different scenarios anticipating an increase in the overtime salary threshold. The report's mid-range option found that an increase in the overtime salary threshold to $808 per week, or $42,016 per year, would affect 1.7 million retail and restaurant workers and would cost business owners $5.2 billion per year assuming employers do not make changes to offset the increased costs. However, chain restaurants operate in a uniquely competitive environment with slim profit margins, and would presumably take measures to mitigate the increased labor costs associated with overtime pay when salaried managerial employees who are currently classified as exempt are reclassified to "hourly" status. Notably, the "food services and drinking places" sector employs 10.3 million workers, roughly 815,000 of whom are currently exempt from federal overtime rules. However, if the salary threshold is raised to $42,016, approximately 59%, or 483,000, of these exempt workers will be affected by the changes.

In addition to the expected increase to the salary threshold, we also anticipate that the U.S. Labor Department regulations will make unnecessary modifications to the "duties test" for restaurant managers which would impose immense costs on chain restaurants and would stifle opportunities for career advancement for hourly associates who wish to manage our restaurants.

While the bulk of our restaurant managers' days are spent performing management tasks, they also multitask, stepping in to help serve diners during busy times, and leading and training team members by working side-by-side with them, when necessary. If the Labor Department proceeds with a regulatory change from the current rules adopted in 2004 in which the overtime exemption is tied to a manager's specific tasks, and moves to a percentage based analysis of the time spent performing duties, such an alteration would mark a dramatic step back to a time when such a percentage based scheme was used 50 years ago. Such a modification would curb a manager's critical ability to multitask in a busy restaurant setting, undermine customer service, limit training opportunities for team members, diminish morale and force complicated assessments of time spent "managing" in a restaurant setting.

The success of our Castles is dependent on excellent customer service, team member satisfaction, and flexibility to meet the demands of a fast-paced consumer-focused environment. In our business, we imagine a future where our team member engagement "top box" score grows from its most recently noted level of 86% to 100%. The way we will get there at White Castle is asking our team members good questions, listening intently to what they tell us, and then acting in a way consistent with what we learn.

What if our policy-makers and thought leaders did the same? What if the "Fair" in the "Fair Labor Standards Act" renewed its focus on a definition of "Fair" that truly focused on freeing enterprising individuals from impoverishment through the unique dignity a job can provide? What if we no longer cast the discussion as a zero-sum game where employers and employees are adversaries – and for one to win, the other has to lose? What if we went beyond bumper sticker politics to truly problem solving policy making?

At White Castle, we are 94 years into a "wild experiment in the hamburger business" that illustrates first hand that more jobs and more opportunity for more people is not only desirable, it is achievable. It is less achievable when lawmakers and regulators, perhaps with the best intentions, feel the need to be overly proscriptive in ways that ignore the real world realities of our businesses and our communities….and in ways that ignore the real world challenges faced by the families and friends who call our Castles home.

The FLSA of the 21st Century should be consistent with the purpose and values from the time in which it was enacted almost 80 years ago, but the law should be modernized to reflect the 21st century demographics of our workforce and the unlimited opportunities provided by our modern and dynamic economy.

Mr. Chairman, on behalf of White Castle and the National Council of Chain Restaurants, thank you again for this opportunity to present my views this morning. I would be happy to answer any questions.