



The Honorable Roger Marshall
U.S. Senate
B33 Russell Senate Office Building
Washington, DC 20510

The Honorable James Comer
U.S. House of Representatives
2410 Rayburn House Office Building
Washington, DC 20515

Dear Senator Marshall and Representative Comer:

On behalf of the National Small Business Association (NSBA), the nation's first small-business advocacy organization, with more than 65,000 small-business members representing every state and every industry across the country, I commend your leadership for introducing the Save Local Business Act, which would reinstate the longstanding definition of what constitutes a joint employer. The legislation is especially relevant today, when small businesses are emerging from the COVID-19 pandemic and seeking clarity in the law in order to grow their business, create new jobs, and meet federal and local obligations.

Prior to August 2015, the standard used by the National Labor Relations Board (NLRB) made it easy to understand who is and is not a joint employer – the relationship existed when one company exercised “direct and immediate” control over another company’s workforce. But then the NLRB replaced the common sense, long standing standard with a new definition – joint employer liability could be triggered by a company exercising vaguely defined indirect control or unexercised potential control. NSBA has serious concerns about this expansive definition, as this standard puts many small businesses at risk to a joint employer finding under the vague test, exposing them to liability, new costs and loss of business control. This also has a ripple effect to other businesses they deal with – including contractors, vendors and suppliers. Those sweeping changes created needless uncertainty for small-business owners, and subsequently hurt job growth.

NSBA is pleased this bill clarifies many of the confusing labor regulations caused by the NLRB’s expansion of the joint employer rule. The legislation provides a simple solution by amending the NLRB and the Fair Labor Standards Act to clarify that two or more employers must have “actual, direct and immediate” control over employees in order to be considered joint employers. For decades, that standard and legal framework helped foster the creation of thousands of beneficial business relationships and allowed entrepreneurs to launch franchise businesses and for contractors to thrive. NSBA supports the return of much needed relief to independently owned and operated small businesses across the U.S. by establishing clear definitions for joint employment.

The Save Local Business Act stands in stark contrast, to the NSBA-opposed Protecting Right to Organize Act (PRO Act/ H.R. 842/S. 420), which codifies into law the NLRB's controversial *Browning-Ferris Industries* joint employer standard, exposing nearly every business relationship to liability for unlawful behavior committed by any entity with which they do business, such as contractors, suppliers, and franchisees. We strongly believe that this policy change would have a negative impact on small businesses as they continue to struggle to survive and recover from the pandemic.

NSBA commends your work on the Save Local Business Act and your commitment to provide certainty and stability for workers, and job creators to thrive and grow. We look forward to working with you to bring this legislation to enactment.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken
President and CEO