Dear Members of Congress,

On behalf of the undersigned organizations, we write to urge your support for the Save Local Business Act, introduced in this Congress by Senator Roger Marshall and Chairman James Comer in the House, which would restore the traditional definition of joint employment. We sincerely thank Senator Marshall and Chairman Comer for their efforts to protect local small businesses.

This important legislation would protect our nation's job creators against executive branch overreach that would upend workplace relationships nationwide, exacerbate staffing shortages, and add crippling legal costs for small businesses.

The current National Labor Relations Board (NLRB) has begun regulatory action to revive and broaden an Obama-era standard that created crippling legal uncertainty for many small businesses. The Biden NLRB stated that it will likely finalize the rule to bring back the Obama regulations later this summer. Therefore, Congress should immediately enact the Save Local Business Act which restores clear guidelines in determining employment relationships.

In 2015, when an activist NLRB issued the seismic *Browning-Ferris* decision, they upended the traditional joint employer definition. At the core of this decision is the idea that a contractor company can be held accountable for labor relations if there is a finding of their influence on the essential terms and conditions of employment. The terms and conditions of employment can non-exhaustively include: wages, benefits, hours, hiring, firing, and direction.

This case invented a new standard - one where the NLRB could examine "indirect or reserved control" over these key factors of employment. Without clearly defined guidelines, this created a ripe opportunity for lawsuits and uncertainty for businesses. This new standard was incredibly broad and empowered the NLRB while putting many businesses at risk for joint employment relationships, particularly in hospitals, staffing agencies, and franchising.

This new rule could create myriad legal headaches for any type of business that utilizes staffing or contract services from outside vendors, or potentially even destroy contractors' businesses. For instance, the joint employer standard may open hospitals up for lawsuits with staffing agencies when costs are already threatening vulnerable hospitals in rural communities. Companies of any size that use outside vendors' services may decide that the legal uncertainty of joint employment is not worth it and cancel their contracts. In many cases, these contractors are small businesses that rely on numerous clients to create a sustainable business model.

For franchising, this standard may destroy the independence of the local small business owner who has their own business under a franchise marquee. Although they may use some intellectual property of the brand, franchise business owners make decisions for themselves about how they run their businesses. If this proposed rulemaking continues, the entire franchise industry may suffer as a result. Potential outcomes include reduced opportunities for new franchise businesses, more legal costs for small business, or closure of franchise brands. According to the International Franchise Association, the expanded joint employer standard cost franchise businesses "$33 billion per year, resulted in 376,000 lost job opportunities, and led to 93% more lawsuits.

Unfortunately, only two short years after their last rulemaking, last year the NLRB announced a notice of proposed rulemaking that indicates an even more egregious expansion of the definition of joint employment. Going even beyond the *Browning-Ferris* standard, which did not present "indirect or reserved" right to control as a decisive portion of the fact-finding process, the 2022 proposed rulemaking changes this to a fundamental part of the test:

> Possessing the authority to control is sufficient to establish status as a joint employer, regardless of whether control is exercised. Exercising the power to control indirectly is sufficient to establish status as a joint employer, regardless of whether the power is exercised directly

Clearly, the current NLRB seeks to supersize the joint employer test under this new rule. For hospitals, staffing, and franchised small businesses, this is even more whiplash for their business outlooks in only a few short years.

Congress should end this regulatory uncertainty that results in huge shifts in employment policy every few years. The repeated change brought by new rulemaking has not been properly justified, is a poor use of taxpayer funds, and will harm many businesses in a time of vast economic uncertainty.

The Save Local Business Act will restore clarity and end the see-sawing effect of changing NLRB majorities. From inflation to staffing shortages to supply chain issues, the last thing that Main Street needs are stacks of legal bills from trying to figure out if they're a joint employer. We urge all Members of Congress to sign on as a co-sponsor and to stand with Main Street and work toward this important legislation's immediate passage.

Sincerely,

National Taxpayers Union

American Consumer Institute

Americans for Limited Government

Americans for Prosperity

Americans for Tax Reform

Center for a Free Economy

Center for Individual Freedom

Center for Union Facts

Council for Citizens Against Government Waste

FreedomWorks

Heritage Action for America

Independent Women's Voice

Institute for the American Worker

Market Institute

Nevada Policy Research Institute

Open Competition Center

Small Business & Entrepreneurship Council

Taxpayers Protection Alliance

Washington Policy Center