

Rep. Grothman: Joint-employer rule hurts small businesses; must be rolled back

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(Washington, D.C.) – Congressman Glenn Grothman (R-Glenbeulah) today explored the growing threat to small businesses and franchises posed by the National Labor Relations Board’s (NLRB) Obama-era definition of the joint-employer standard during a combined House Education and the Workforce Subcommittee on Workforce Protections and Subcommittee on Health, Employment, Labor and Pensions hearing.

The subcommittee hearing specifically focused on Rep. Bradley Byrne’s (R-Ala.) Save Local Business Act (H.R. 3441), of which Grothman is a co-sponsor. The Save Local Business Act would roll back the expanded definition of the joint-employer rule to define joint employers as two or more employers who have “actual, direct and immediate” control over employees.

Witnesses at the hearing included small business owners and employment lawyers. Grothman questioned two of the witnesses: Mr. Zachary Fasman, a partner at Proskauer Rose, LLP, and Ms. Tamra Kennedy, a Taco John’s franchise owner.

Excerpts of Grothman’s remarks

Grothman: “I’ll start off with Mr. Fasman. It’s kind of a difficult topic because small business is the backbone of America and government, for a long time, has been waging a war on small business – trying to drive them out of business. Just punish them, and they hate them. A lot of small businesses today are franchises. Can you give me, in general, what will happen to franchises as [the expanded joint-employer

standard] goes into effect? Will more of them be driven into becoming corporate stores? Will more employees be forced to work for large corporations? Is that something that will happen in the long run?"

Mr. Fasman: "That is, of course, where this ultimately goes. If you're a large franchisor and you're found to be a joint-employer with franchisees across the country, you may have thousands of collective bargaining agreements that you have to negotiate. And that's untenable. So what do you do under those circumstances? There are certain things you can do, and one of them is to say we won't have franchises."

"They all become corporate stores."

"Yeah."

"Not to mention, you don't want to be personally on the hook for what's going on with someone you're not supervising yourself."

"Absolutely right. And that really goes back to what we're talking about here. It's hard for a business that has a contractual relationship with another business, and says, 'Look, you run all these things we don't want. You hire, you fire, you pay, and you're responsible for this.' To be told after the fact by a federal agency, 'Oh, but by the way, you're a joint-employer because you have the potential to control that relationship.' That just makes no sense [...] Companies do this not to evade the law, but because it's a legitimate and an important business model in generating jobs throughout the United States. It's not a nefarious way to get around paying employees what they're entitled to under the law."

"Ms. Kennedy, as someone who is a franchisee, would you feel you were a small businesswoman if you lost control of the employer-employee relationship in which more of the employer-employee relationship would be directed from the corporate level?"

Ms. Kennedy: "In effect, it would make me a manager for them if they are going to be responsible for employees that are technically my employees and my business. Why would they want to carry all of that risk if they couldn't direct every action of those employees? And that's really what's at odds here today: that uncertainty over whether or not they could take over control of my employees. Because they might be held responsible in the end for what they do."

“We’re looking at joint-employer rule here today, Ms. Kennedy, but we sit on other committees and deal with other sort of business. And this idea of hating small business, forcing them into a position where they ultimately have to be bought out by a big corporation, is something we see in other areas – not just in the restaurant business. Do you know why the government hates small business and tries to drive them out of business. Could you speculate as to why that is? Why are their politicians in favor of this rule?”

“I can tell you from my perspective that it’s easier to control.”

“Easier to control the big business rather than the little guy [...] It’s a shame that the government is trying to drive people like you out of business.”

[Click here to view Grothman’s full remarks \(begins at 2:16:16\).](#)

Background

In August 2015, the NLRB expanded the joint-employer standard to define joint employers as those who have direct or indirect control over employees. Under the new joint-employer standard, employers who contract with a separate company can share control over that company’s workforce.

For example, the standard allows franchisors to control and heavily monitor franchisees, including in the areas of hiring, firing and other day-to-day operations, creating unnecessary burdens for franchisees.

In June, The Trump administration’s Department of Labor rescinded the Obama administration’s guidance on the joint-employer standard. The 2015 NLRB ruling is also being challenged in court.