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March 4, 2024

Dear Senator:

On behalf of NFIB, the nation's leading small business advocacy association, I write in strong support of H.J.Res. 98, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Labor Relations Board relating to "Standard for Determining Joint Employer Status."* This resolution will restore the independence of small business owners by repealing the NLRB's harmful new Joint Employer standard. **This vote will be considered an NFIB Key Vote for the 118th Congress.**

From 1984 to 2015, the National Labor Relations Board (NLRB) defined a joint employer as a business that yields direct control over hiring, terminating, and managing employees. Under this standard, a small business was deemed a joint employer only if it exercised direct and immediate control over another company's employees. In the 2015 *Browning-Ferris* ruling, the NLRB rewrote the standard to include indirect control, so that even influence over employment would qualify a business as a joint employer. Under this standard, a small business may be liable for another company's employment law violations, and this broader standard has the potential to inflict serious harm to the small business community.

In 2023, the Board adopted a similar statute that will again result in uncertainty for small business owners. This standard will have a significant effect on independent franchisees. Before the adoption of this standard, a franchisee was in most respects an independent business owner. With the adoption of the new standard, independent franchisees can now lose control over their workforce by allowing workers to collectively bargain with national franchisors. This new standard has the potential to turn independent franchisees into managers who must abide by a collective bargaining agreement that they were not involved in writing or approving.

NFIB is also concerned that this new standard may have potential unintended consequences on small and independent businesses outside of the franchise model. This new standard for joint employment has the potential to bring many businesses that regularly use common contractors such as a janitorial service provider into joint employment status. This new arrangement may subject small business owners to new

liabilities for labor law violations by the second party in the joint employment relationship even though the small business was unaware of the practices of the second party.

Lastly, 89% of NFIB members believe that a business should not be responsible for the hiring practices of a subcontractor.¹

NFIB strongly supports H.J. Res. 98 and it will be considered an NFIB Key Vote for the 118th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Temple". The signature is stylized with a large initial "A" and a long horizontal stroke.

Adam Temple
Senior Vice President for Advocacy
NFIB

¹ NFIB Member Ballot, "Should a contractor be responsible for a subcontractor's hiring practices?" (Mandate, vol. 567, August 2015)