



**COALITION TO SAVE
LOCAL BUSINESSES**

LYNN BERBERICH

OWNER,

**BRIGHTSTAR HEALTHCARE OF BALTIMORE CITY/COUNTY
BALTIMORE, MARYLAND**

**TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON
SMALL BUSINESS AND ENTREPRENEURSHIP**

LEGISLATIVE HEARING

**“KEEPING THE AMERICAN DREAM ALIVE:
THE CHALLENGE TO CREATE JOBS UNDER THE
NLRB’S NEW JOINT EMPLOYER STANDARD”**

JUNE 16, 2016

Good morning, Chairman Vitter, Ranking Member Shaheen, and members of the Committee. My name is Lynn Berberich, and I own a BrightStar Care homecare franchise in Baltimore, Maryland. Thank you for the opportunity to appear before the Committee to discuss some of the challenges facing my small business today. I know I am not alone in my concerns, so when you hear my story, please also consider the many other franchisees and small business owners who share my sentiments and are understandably concerned about the National Labor Relations Board's (NLRB) decision to change what it means to be an employer.

I appear before you today on behalf of the Coalition to Save Local Businesses, a coalition of both franchise and non-franchise business owners across the U.S. In addition to telling you about my personal path to entrepreneurship, I will also share with you some examples of how the new "joint employer" standard is affecting my ability to operate and grow my business.

My path to small business ownership began during the 2008 economic downturn. After a 30-year career in the corporate world – the last 19 of those years with the same company – I found myself in a position that so many Americans were stunned to be in at that time: on the receiving end of the dreaded "pink slip." I could have reacted to the news that my services were no longer needed with anger and a sense of defeat, but instead I was excited by the opportunity the layoff presented. I had always considered starting my own business and getting out from under the glass ceiling and this was the motivation I needed to make a change. I looked at several options and alternatives for business ownership. Due to my age and the fact that I was investing my life savings, I was looking to minimize some risk, and franchising was the most attractive option. It is a proven business model that allows families to launch businesses that people know and trust right in their own neighborhood.

After exploring many options to provide a variety of services to my community, I honed in on home care, due in large part to my own personal experiences. My grandmother passed away at the age of 107 — she had lived at home until she was 95. My father had a disease called Lewy Body Dementia, a form of dementia mixed with symptoms of Parkinson's. He stayed at home until he passed away at the age of 90. I also had a brother who battled cancer and passed away at a young age with home hospice and his family around him.

My life experience has shown me that people want to stay at home, and we should do what we can to ensure our loved ones can age peacefully in place. That passion led me to this important business. BrightStar Care, in particular, stood out because of its founder, Shelly Sun, and her dynamism for a service that meant so much to my family as we cared for our loved ones during very trying times. Through launching my small business, I felt truly fortunate to be able to "pay it forward" to other families in my community.

We opened our doors in 2009, and business really took off in 2010. Providing this service to our community not only achieved our primary goal of caring for seniors at the most vulnerable phase of their adult lives, but it also provided the opportunity to create more than 200 new jobs. We are not only helping others, but we're helping create economic activity and jobs in our community. What more could you want from a neighborhood business?

Members of the Committee, the impact of the NLRB's new joint employer standard goes far beyond me. It negatively affects the lives of my 200+ employees, and most certainly those of our clients, who, again, are at the most vulnerable phases of their lives. Due to the new joint employer standard and its increased liability for my franchisor, BrightStar has been forced into the unfortunate position of having to distance itself from its franchisees. BrightStar is understandably reluctant to provide any help or even advice on any matter that remotely relates to employment; instead, I now have to pay out of my own pocket for products and services that I used to receive as part of my franchise fee. Let me give you a couple of examples.

First, prior to the NLRB's ruling, BrightStar provided its franchisees with an integrated applicant tracking systems. The applicant tracking program was an exemplary system for workforce development that suited our needs and the needs of those seeking employment. When an applicant sent his or her information to BrightStar, that information would be made available to franchisees so we could have access to the best and the brightest in our region and move them through the interview, selection, and on-boarding phases. This was an invaluable service, as attracting and retaining strong professionals is paramount to the success of a home healthcare business. Because of joint employer and all of the unanswered questions associated with this major change in labor law, it is now impossible for my franchisor to continue providing this service. Instead, now every BrightStar franchisee has to fund its own recruitment process – an increased investment equivalent to 5 percent of our franchise marketing fees plus a regular \$1,200 fee for an off the shelf applicant tracking system. Whereas in the past I could use the national branding and recruiting to source applicants and take them through the hiring process, I now have to fund this entirely and do it all on my own. It also means less corporate marketing and an applicant tracking system that is not as integrated and more cumbersome that what was used in the past. This has drastically slowed down our hiring process and impacted our growth, and it will make it harder for us to continue to accept new clients and grow. Fewer employees mean fewer clients. Fewer clients mean fewer jobs. This is the cycle that guarantees the demise of a business – a lesson I learned the hard way during the 2008 recession.

A second example of the real-world pain caused by joint employer is that my franchisor has long provided free-of-charge a payroll platform for its franchisees' use. My understanding is that in the next 12-24 months, depending upon how joint employer

plays out, we as franchisees will be responsible for our own payroll system. Franchisees will have to pay for this. The Administration's joint employer policy deserves the blame for that service reduction too.

Let me be clear: I understand and appreciate completely why BrightStar feels compelled to take away these products and services from its franchise owners. I have a great relationship with BrightStar; indeed, I was drawn to this franchise for their ethics, business savvy, strategic vision, and focus on quality care and great customer service. But my franchisor is an example of a brand company that feels compelled to reduce their joint employment liability risk in the face of the Federal government's new policy. The losers are small business owners like me. Too often, when franchisees make requests for guidance or assistance the response is that the corporate office would like to help but is unable to assist due to joint employer concerns.

These are just the beginning of the negative changes that small businesses face in the aftermath of the new joint employer standard. As a result of the uncertainty facing franchise small businesses due to the NLRB's decision and increasing costs due to other government regulations, I have held off expanding my business into a third territory. If Congress does not address these concerns now, there will certainly be many more small business costs and job destroying stories.

Franchisees are only beginning to experience reduced assistance and guidance. There's a common saying in our industry that "franchising allows you to be in business for yourself, but not by yourself." The new joint employer standard puts franchisees back out by ourselves. We are only beginning to feel what it's like to lose the support of our franchisor, and we can only guess what will be next.

Members of the Committee, the new joint employer standard based on "indirect control" and even "reserved, unexercised control" could be applied to nearly any conceivable business relationship. All small and large businesses could be negatively impacted.

Mr. Chairman, I am in the business of making the tough times in life easier for people, and I would like Congress to, in turn, make the lives of small business owners easier by providing a fair fix to the harmful joint employer standard. The importance of solving this issue for small businesses cannot be overstated.

Thank you, Mr. Chairman, for calling today's hearing. I would be happy to answer any questions.