

**Testimony of**

**Gerald F. Moore, Owner and Operator  
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Knoxville, Tennessee**

**Before the**

**Senate Committee on Health, Education, Labor, and Pensions**

**“Who’s the Boss? The “Joint Employer” Standard and Business  
Ownership”**

**February 5, 2015**

Chairman Alexander, Ranking Member Murray, and distinguished members of the Committee, my name is Gerald Moore. I am the owner and operator of five The Little Gym franchise locations. I am appearing before you today on behalf of my business and the International Franchise Association. Thank you for the opportunity to share our views on the joint employer issue.

I am a former school teacher. I volunteered for the U.S. Army in 1970 and I received the Meritorious Service Medal for my service. I later worked for Ryder Systems, Inc. for nearly 30 years. When my family opened our first The Little Gym franchise location in Raleigh, North Carolina in 1996, we took a huge financial risk. At the same time, we felt confident if we executed our franchise successfully, we would be better off, and create something we could pass along to our kids. We later opened locations in Greensboro, North Carolina; Mount Pleasant, South Carolina; Knoxville, Tennessee; and Farragut, Tennessee, and are proud of the success we have had the past nineteen years.

The Little Gym is an experimental learning center focused on learning through physical and educational programs for young children. Our mission is to help develop healthy, smart and socially-adept children who can explore their own potential through our 3 Dimensional Learning Process and better understand and enjoy the world around them. We offer parent/child classes for children from four months to age three, as well as a variety of sports, dance, music, gymnastics and other programs for children up to the age of twelve.

My business is truly a family business. I co-own my franchise locations with my wife and our two children. That is why franchising appealed to us in the first place – it was something that we could do as a family. And The Little Gym brand was a perfect fit for my family. I had management and operational experience, my son was in sales, and my wife and daughter were both educators. We knew that the combination of our skills and experiences with the proven The Little Gym brand would allow us to be successful. Quite honestly, I do not believe my family could have successfully opened and operated a children’s business on our own. The Little Gym International’s guidance and support has made all the difference to my family. We would not be where we are today without The Little Gym International’s business model.

That said, The Little Gym International does not run our business. The Little Gym International as the franchisor provides us with the brand name and the recognition that comes with it. The Little Gym International provides us with product standards to make sure that we provide the high-quality services and programs that customers have come to expect from The Little Gym operation. And we pay for these benefits – in the form a monthly royalty payment, which is set by the contractual relationship we have agreed to in our franchise agreement with The Little Gym International, our franchisor.

We have an annual audit site visit with The Little Gym International to review brand and service standards and to help us grow our business. We also have monthly calls with a franchisor representative to update us on new programs or marketing strategies. But The Little Gym International is not involved the daily management of

our gyms. For example, we are free to determine staffing levels for our gyms. We decide who to hire and what to pay. We decide who to discipline and who to discharge, as well as who to develop to take on additional responsibility. We decide what benefits to offer our employees. The examples could go on and on. The Little Gym International does not play any role in these types of business decisions.

The day-to-day operation and management of our business is ours and ours alone. But I fear that this would drastically change if the National Labor Relations Board expands the current joint employer standard. I am here today to share my concerns and the concerns of franchisees across the country on this issue. In a recent survey of IFA members, 97 percent of franchise business respondents believe the expanded joint-employer standard would have a negative impact on their business, with 82 percent saying the impact would be “significant.”

I am an independent business owner. Certainly, I reap the successes of my business but I am also responsible for its failures – and the liabilities that may come from such failures. As a small business owner, I work hard to manage risk and reduce liabilities where I can. For example, if (God forbid) one of my employees mistreated a child at one of my gyms, I would be responsible. I understood that was my responsibility when I purchased my business and, as a result, I make sure that my gyms are staffed with high-quality employees and that we maintain proper supervision over those employees at all times. I think we can all agree that to do otherwise – to turn a blind eye to this risk – would be foolish and bad for business.

An expanded joint employer standard, however, would mean that my franchisor would be jointly responsible for all of my employment-related liabilities. Just as I try to manage risk and reduce liabilities for my business, The Little Gym International will need to do the same. So, if The Little Gym International is now also liable in the event an employee mistreats a child, won't The Little Gym International want to have a say in whom we hire and how we supervise them? If it would be foolish for me to turn a blind eye to this risk, it will be equally foolish for The Little Gym International to do the same. This will mean increased control and more day-to-day involvement by The Little Gym International. That can only mean one thing for me: less freedom and less autonomy to run my business as I see fit – a business that I purchased with my savings in order to provide opportunity and security for my family. Our family business will no longer be ours.

My family currently owns the rights to a sixth location where we were planning to open another The Little Gym franchise. But, the uncertainty on this very issue has forced us to put our plans on hold. We are not at all comfortable with the idea of more franchisor involvement in our business and we are not willing to put in the hard work to expand our business if it soon may no longer truly be ours. The National Labor Relations Board's recent actions have directly resulted in lost opportunity and income for my family and lost development and fewer jobs in our community. I think that is a terrible shame.

What's perhaps most disappointing about the NLRB's actions is the General Counsel's assertion in his amicus brief to the pending *Browning-Ferris* case that the Board should return to its pre-1984 "traditional" approach. But the Board has never

treated franchisees and franchisors as joint employers. In its 1968 *Southland* case, the Board carefully analyzed whether a 7-Eleven franchisee's use of the trade name and operational system made the franchisor a joint employer. In declining to find joint employment, the Board noted that the critical factor in determining whether joint employment exists is the control the franchisor exercises over the labor relations policy of the franchisee.

While the mere possibility of a broader definition of joint employer has already impacted my family, I fear that the real impact will be felt down the road when other families are looking for their first franchising opportunity, just as my family was in the mid-1990s. If franchisors are now on the hook for the liabilities of their franchisees, upstart entrepreneurs with limited assets will be passed over for well-established franchisees that can better protect the "deep pockets" of the franchisors. Simply put, small business owners will be less attractive business partners for franchisors and there can be no doubt that this will drastically reduce the opportunities for business ownership all across the country. Franchise businesses are expected to grow and create more jobs at a faster pace than the rest of the economy in 2015 for the fifth consecutive year. The expanded joint employer standard could put the brakes on what looks like a banner year of accelerated growth and job creation in the franchise sector.

I hope my testimony today has helped the Committee understand how this issue impacts franchisees and those desiring to become franchisees. My family and I have worked incredibly hard to build our business over the past nineteen years. I had hoped that this would continue to be my family's business long after I was gone.

Instead, I am now contemplating the possibility that it could all disappear. I speak for myself and my family when I say please do not allow the National Labor Relations Board to take this all away. We urge the Committee to take whatever steps possible to ensure that the current joint employer standard is maintained.