OHIO CHAMBER of COMMERCE

November 27, 2018

The Honorable Frank LaRose
Chairman, Ohio Senate Transportation, Commerce and Workforce Committee
Statehouse
1 Capitol Square
Columbus, Ohio 43215

RE: House Bill 494 Letter of Support

Dear Chairman LaRose:

On behalf of the nearly 8,000 members of the Ohio Chamber of Commerce, I write to you in support of House Bill 494; legislation that would further clarify that the employees of a franchisee will be considered employees of a franchisor for the purposes of Ohio Minimum Fair Wage Standards, Workers' Compensation, Unemployment Compensation, or Income Tax laws.

This legislation is a result, in part, due to the National Labor Relations Board (NLRB) decision in *Browning-Ferris Industries,* 362 NLRB No. 186 (2015), which upended 30 years of precedent and established an unworkable joint-employer standard that could have a devastating impact on the franchise business model. In *Browning-Ferris* the 2015 NLRB ruled that employers could be deemed joint employers simply by reserving control or exerting indirect control over the same workers. This eliminated the previously long-standing requirement that an employer ***actually*** exercise control rather than simply having a contractual right to do so. The board in the case also threw out the precedent that an employer must exercise direct, immediate, and not limited routine control over an employee ruling that indirect control, such as through an intermediary, was sufficient to establish joint employment.

Thus, under *Browning-Ferris,* simply having a contractual right to control could create joint-employment between two separate businesses. This is especially problematic for businesses utilizing the franchise model because both parties to the relationship could be deemed joint employers for purposes of unionization, collective bargaining, and defense of unfair labor practice allegations. If this interpretation is adopted in other areas, such as those state laws clarified by HB 494, it could threaten the autonomy of franchisees to act as independent business owners and operators. Further, franchisors could face unfettered liability for the HR and other decisions of franchisees even when they do not exercise control over daily operations or employment decisions.

While state law cannot overturn the NLRB decision, HB 494 will prevent state agencies and regulators from extending the *Browning-Ferris* joint-employer standard when interpreting state laws here in Ohio. The legislation clarifies that the employees of a franchisee will not be considered employees of a franchisor unless the franchisor expressly assumes that role in writing. This will bring stability and predictability to this area of state law and codifies what the parties to franchise agreements always knew the law to be.

For these reasons, we urge you to support HB 494. Please feel free to contact me if you have any questions regarding our support at kboehner@ohiochamber.com or 614-228-4201.

Respectfully,

Kevin Boehner
Director, Small Business and Workforce Policy