

Congress of the United States
Washington, DC 20515

October 1, 2018

The Honorable R. Alexander Acosta
Secretary
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Subject: Modernization of 29 Code of Federal Regulations [CFR] 791.1 and 791.2 - Joint Employer Status

Dear Mr. Secretary:

The undersigned write to request that the U.S. Department of Labor develop rulemaking to clarify the current standard for determining Joint Employer Status under the Fair Labor Standards Act (FLSA). The conflicting and outmoded FLSA standards for joint employment have contributed to overly costly litigation for small businesses. This is not a cost that most Main Street businesses can bear, and it is very important that unnecessary lawsuits be curbed through reasonable regulation.

As you know, the FLSA regulations were written nearly 70 years ago and are badly in need of clarification. In fact, while the two Code of Federal Regulations sections dealing with joint employer are dated 1958 and 1961, the language of the interpretation was actually issued in two bulletins dated 1939 and 1940. The current regulations have not been updated at all since a 1961 interpretation to a footnote. In addition, both the current interpretive language and the 1961 footnote were published as a “statement of general policy or interpretation not directly related to regulations” without notice or public comment. As a result, it relies on court cases from the 1940s and 1950s and does not reflect current case law.

More importantly, differing tests of joint employer status under the FLSA have developed in the federal circuit courts over time. While some circuits have adhered to a common law agency test or the economic realities test when evaluating joint employment cases, most circuits have gradually chosen to mix and match factors from both tests into various formulations depending on the statutory scheme they are analyzing. The most egregious standard may have been established by the Fourth Circuit’s 2017 decision in *Hall v. DirecTV, LLC*, 846 F.3d 757 (4th Cir. 2017), in which the court held that two or more persons or entities may be found joint employers so long as they are “not completely disassociated” with respect to a relevant worker. Businesses and employees in different states deserve to be subject to the same standard of joint employment liability, and this confusion could be significantly resolved by a new federal regulatory standard.

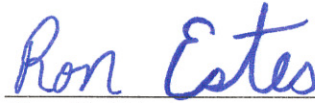
The FLSA’s joint employment requirements need to be modernized and harmonized to limit needless litigation against small businesses, as many different business formats are threatened by

expensive lawsuits against multiple business partners for alleged wrongdoing against only one entity. We therefore respectfully request the Department of Labor propose and finalize a rulemaking to clarify the joint employment standard under the FLSA. It is not an exaggeration that the future success of small business in the United States rests upon the clarification of the joint employer issue.

Sincerely,



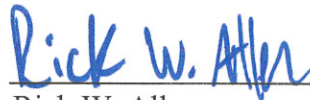
Bradley Byrne
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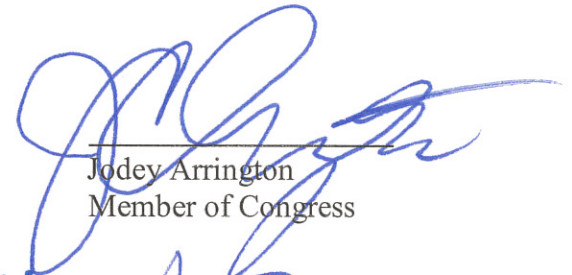
Ron G. Estes
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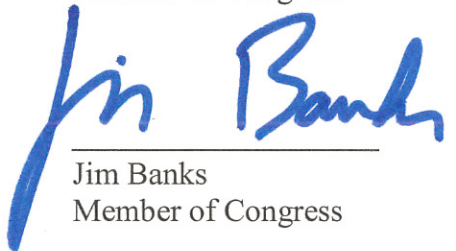
Robert Aderholt
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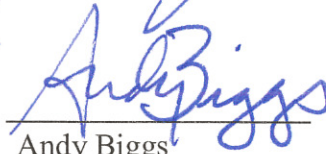
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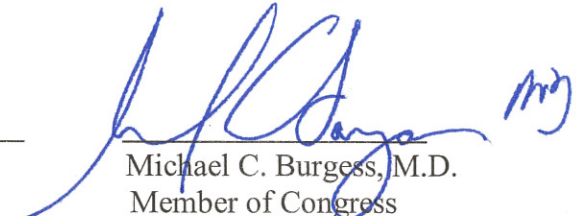
Dave Brat
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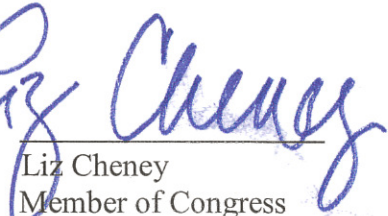
Michael C. Burgess, M.D.
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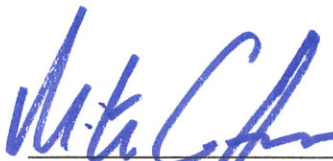
Earl L. "Buddy" Carter
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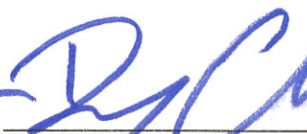
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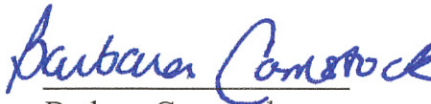
Mike Coffman
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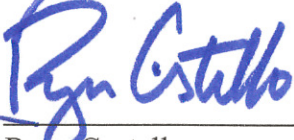
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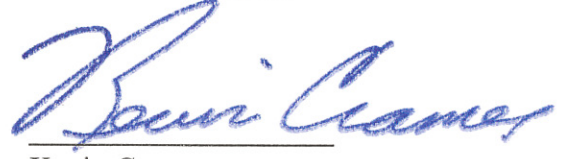
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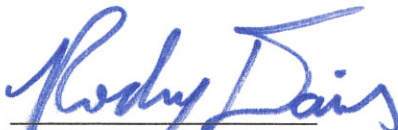
Rick Crawford
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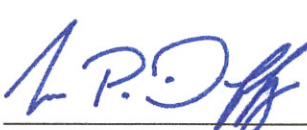
Henry Cuellar
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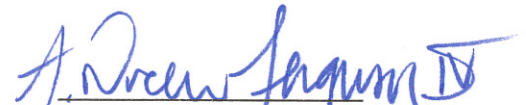
Warren Davidson
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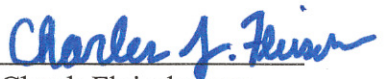
Rodney Davis
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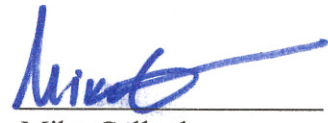
Drew Ferguson
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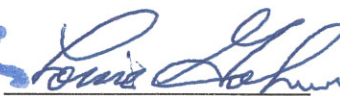
Bill Flores
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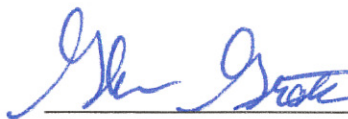
Bob Gibbs
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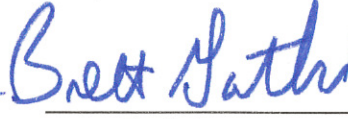
Louie Gohmert
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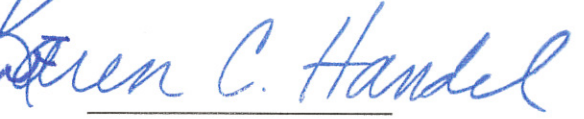
Sam Graves
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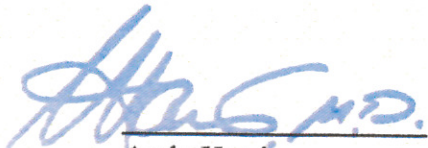
Glenn Grothman
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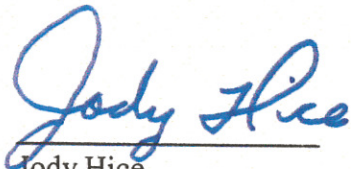
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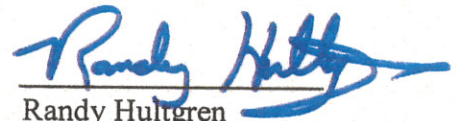
Karen C. Handel
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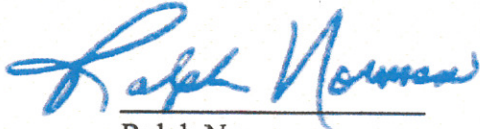
Andy Harris
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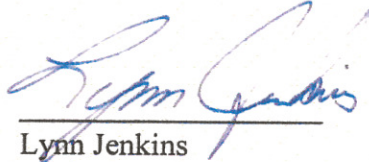
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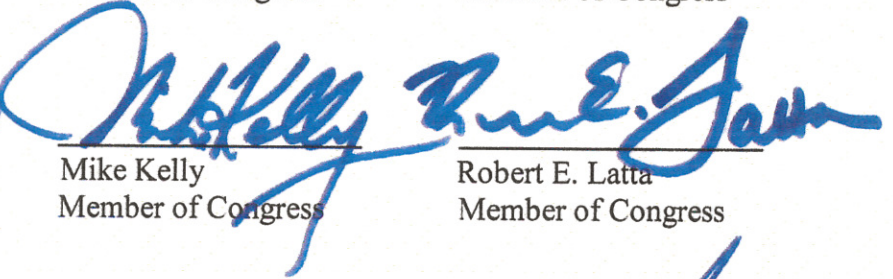
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Mike Johnson
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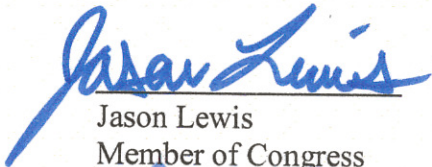
Sam Johnson
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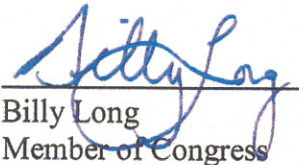
Mike Kelly
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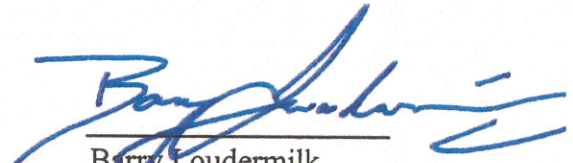
Robert E. Latta
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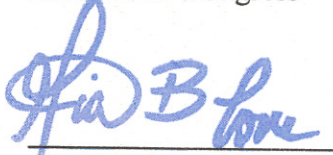
Jason Lewis
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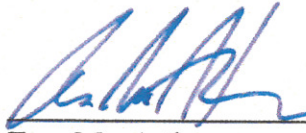
Billy Long
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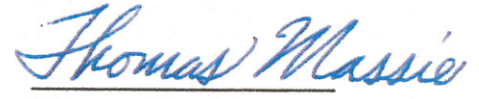
Barry Loudermilk
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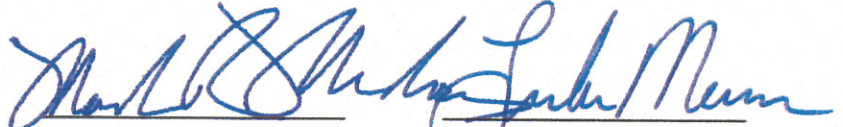
Tom MacArthur
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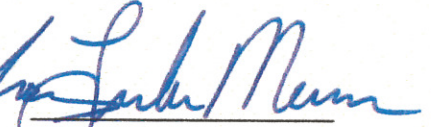
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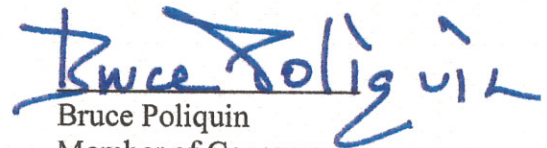
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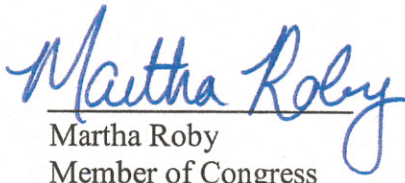
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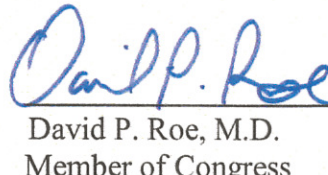


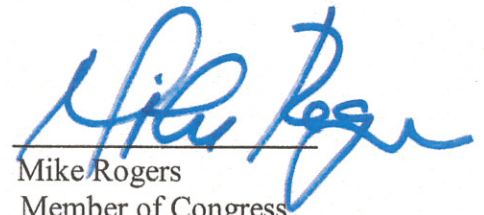
Scott Peters
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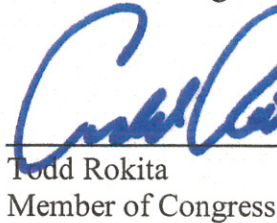


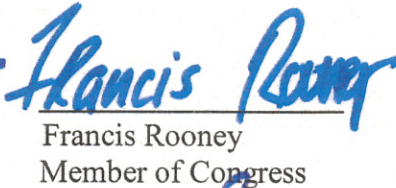
Bruce Poliquin
Member of Congress

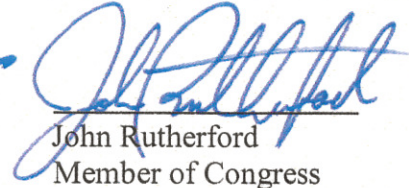

Martha Roby
Member of Congress

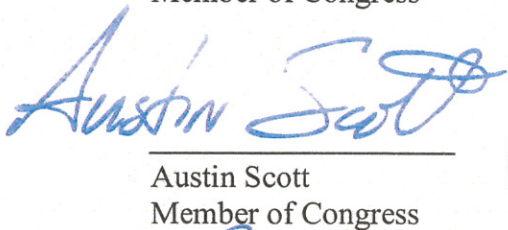

David P. Roe, M.D.
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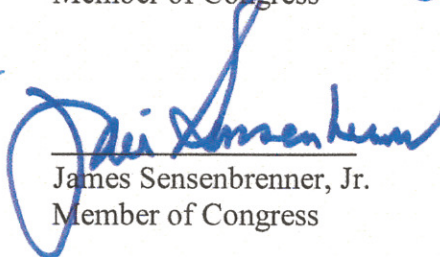

Mike Rogers
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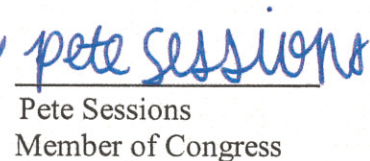

Todd Rokita
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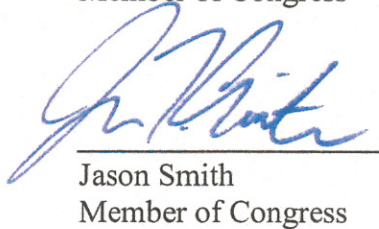

Francis Rooney
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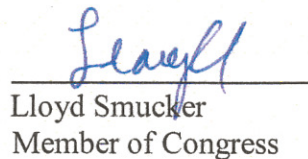

John Rutherford
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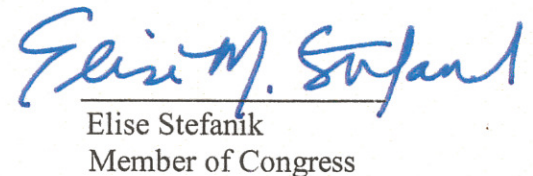

Austin Scott
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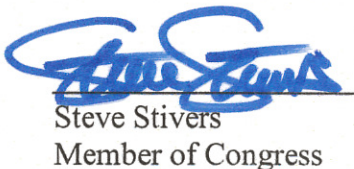

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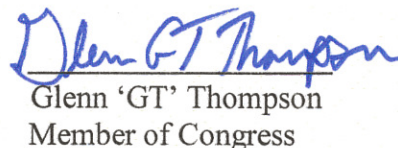

Pete Sessions
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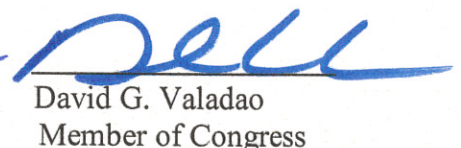

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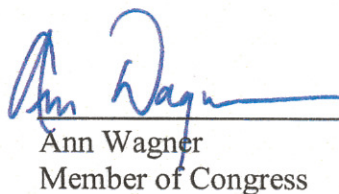

Lloyd Smucker
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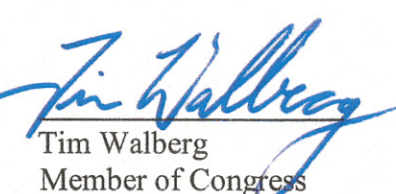

Elise Stefanik
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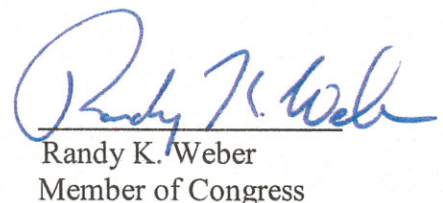

Steve Stivers
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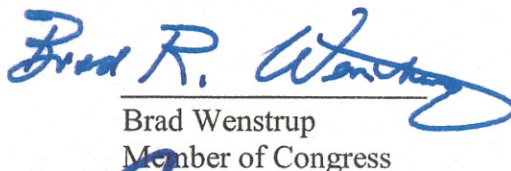

Glenn 'GT' Thompson
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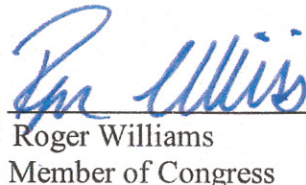

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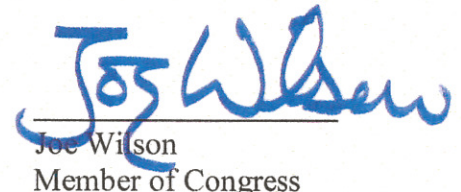

Ann Wagner
Member of Congress

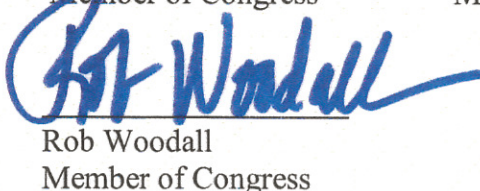

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