



Statement  
On behalf of the  
National Restaurant Association  
&  
White Castle System, Inc.

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ON: ENCOURAGING ENTREPRENEURSHIP: GROWING BUSINESS, NOT BUREAUCRACY

TO: JOINT ECONOMIC COMMITTEE

BY: JAMIE RICHARDSON, VICE PRESIDENT OF GOVERNMENT, SHAREHOLDER AND  
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**Statement on: “Encouraging Entrepreneurship: Growing Business, Not Bureaucracy”**

**By: Jamie Richardson**

**On Behalf of the National Restaurant Association &  
White Castle System, Inc.**

**Joint Economic Committee  
216 Hart Senate Office Building.  
Tuesday, July 12, 2016, at 2:00pm**

Good afternoon Chairman Coats, Chairman Tiberi, and distinguished members of the Committee. Thank you for the opportunity to testify before you today on behalf of White Castle and the National Restaurant Association.

My name is Jamie Richardson and I serve as Vice President of Government, Shareholder and Community Relations for White Castle System Incorporated.

It is an honor to be able to share with you the impact the growing legal and regulatory framework is having on businesses like White Castle and the restaurant and foodservice industry in general, particularly on our ability to create jobs. I am also Chairman of the Ohio Restaurant Association. It is an honor to be here to share our perspectives on behalf of our family owned business, my fellow restauranteurs from the State of Ohio, and the National Restaurant Association.

As a family owned business celebrating our 95<sup>th</sup> birthday, I would like to tell you today that White Castle’s growth has continued uninterrupted. I would like to tell you that we have continued to open more restaurants in more neighborhoods, providing more jobs, and serving more customers.

I would like to tell you that, but I cannot. In fact, White Castle’s growth has halted. In 2012, when I testified before the House Oversight & Government Reform Committee on the Affordable Care Act, we had 408 White Castle restaurants. Today, we have 390.

I would like to highlight today the impact the Affordable Care Act (ACA) is having on our business as well as the impact of the more recent Overtime Regulations. While other factors have slowed our growth, it is the mounting uncertainty and the collective effect of a legislative and regulatory regime that is hostile to job creation that has brought us to a standstill. We are not alone. According to results from the May 2016 National Restaurant Association Industry Tracking Survey, over one out of five restaurant operators report government as their current top challenge—a higher proportion than the economy or building/maintaining sales volume.

**The Restaurant and Foodservice Industry**

The National Restaurant Association is the leading trade association for the restaurant and foodservice industry. Its mission is to help members like White Castle establish customer

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loyalty, build rewarding careers and achieve financial success. The industry is comprised of more than 1 million restaurant and foodservice outlets and employs 14.4 million people. The majority of restaurants in America qualify as small businesses yet our industry is the nation's second-largest private-sector employer. Restaurants are job creators and we currently employ approximately 10 percent of the U.S. workforce.

Restaurants can provide great careers but we are also the employers of choice for people looking for flexible work schedules. We employ a high proportion of the population looking for part-time and/or seasonal work. As an industry of small businesses, more than seven in 10 eating and drinking establishments are single-unit operators. As popular as it is to be in the restaurant business today, our industry has relatively low profit margins, averaging about 4 to 6 percent before taxes. Labor costs are one of the most significant line items for a restaurant.

For generations of American employees and citizens, we are a driving force for entrepreneurship—a place where a favorite family recipe becomes the inspiration for the next successful dining destination. Our nourishing food unites neighborhoods. We are the driving force that prepares today's employees for the challenges of a changing workplace and the promise of tomorrow. We do this by teaching life skills in problem-solving, responsiveness, customer focus and risk-taking. The skills we teach are the life blood of entrepreneurship.

### **White Castle**

White Castle is the Taste America Craves. We believe good business, great food, and responsible citizenship should all go together. As a family company, we are part of the neighborhoods we serve. We live here, work here, and raise our families here—that is why we are committed to having a positive impact on the families and communities around us. Our dedication to serving our community is not just a company priority—it is a personal commitment.

Based in Columbus, Ohio, White Castle first opened its doors in 1921 in Wichita, Kansas. Like the entrepreneurs of today, we started with an idea, lots of hope, some borrowed funds, and a commitment to make a difference in our community by serving up hot and tasty, affordable food. We paid back our original loan of \$700 in less than 90 days, and have continued to reinvest our earnings in our people and our business ever since. To this day, we are a family-owned, privately held company. The majority of our 10,000 team members work in our 390 restaurant locations across 12 states. We have built several locally-based divisions to supply each restaurant, including bakeries, meat processing plants, and frozen food plants. Together, these businesses produce the famous menu items we offer to White Castle customers.

Our founder Billy Ingram had two key governing principles in growing the business:

- 1) Happy employees make happy customers; and,
- 2) We have no right to expect loyalty except from those to whom we are loyal.

These principles shape all we do to this day. They drive the employee and guest loyalty that continues even as the world changes around us. More than one in four of our 10,000 team

members has been with us 10 years or more. The average tenure of our restaurant general managers is 21 years—and turnover for this key group last year was less than 10 percent. White Castle is also committed to diversity. A third of our restaurant general managers are African American, and 77 percent are female.

Like our brothers and sisters in the world of foodservice, we represent the essence of the American Dream. We believe that a good idea, hard work and taking reasonable risks results in real rewards, such as job creation, innovative products, and services that empower everyday citizens with happier and more prosperous lives.

Still, White Castle, along with restaurants throughout the country, continues to encounter the unchecked growth of regulatory barriers and burdens while facing unprecedented economic challenges. These challenges must be addressed in order for restaurants to grow. We are committed to addressing those challenges in a way that enables us to continue serving our customers with excellence. But to do that effectively, we need Congress to address our nation's growing bureaucracy.

### **Implementation of the Affordable Care Act**

Under the law, White Castle is subject to the Shared Responsibility provision of the Affordable Care Act (ACA). The employer mandate, as it is commonly known, requires employers like White Castle to offer their full-time team members, defined in the ACA as those employees working 30 hours or more per week, health care coverage that is affordable and of minimum value, or face potential penalties.

The ACA's definition of full-time employment as 30 hours per week is not in line with the traditional full-time employment standard of 40 hours per week. Many employees in our industry are already losing wages and hours, due to the law's perverse incentives. This is particularly true for part-time employees who, until now, were those working below the traditional 40 hours per week.

Data is already available to demonstrate that the ACA is incentivizing some employers to limit the hours part-time employees can work. Beyond private-sector employers, even some states, cities, counties, public schools and community colleges around the country are being forced to limit or reduce the hours part-time employees can work. These decisions are necessitated by an economic reality—that for many employers and employees, it is not feasible to bear either the cost of health care coverage or the penalties for failing to do so.

The law is also incentivizing many employees to continue to work part-time. That's due in part to what's known in the insurance industry as the "spousal exclusion"—meaning that a person who gets offered coverage through his or her employer will automatically be kicked off their spouse's health insurance coverage. This spousal exclusion makes it very difficult for a family to be covered under one plan and benefit from the lower family coverage cost. Many employees have raised this issue with their employers and have requested to remain as part-time employees.

The ACA is leading to significant workforce restructuring. In the past three years, the proportion of part-time employees working just below 30 hours a week has been rising. At the same time, the proportion of those working just over 30 hours a week has been declining. The reason is simple: The ACA's 30-hour, full-time definition is now forcing employers and employees alike to make different choices to comply with this new standard.

Employers face tremendous potential financial liabilities under the ACA's employer penalties. As a result, employers with variable-hour workforces and flexible scheduling must be increasingly deliberate about the hours our employees work. That's having a negative impact on our ability to give employees the hours and schedules they seek.

One of the attractive benefits for employees in our industry had been flexible scheduling. Employees can change their hours to suit their personal needs and even pick up additional hours to earn extra income when needed. Part-time jobs with flexible scheduling are not only appealing, but often critical for students, single parents, and other individuals struggling to balance various obligations and commitments.

Harmonizing the definition of full-time employment in the ACA with the traditional 40-hour-per-week definition would benefit employees, through more hours and income. It would also let employers focus on growing their business and creating jobs, rather than on taking on new administrative burdens and finding ways to restructure their workforce. Aligning the ACA's definition of full-time employment with the traditional 40-hour standard would help avoid further disruptions to employees' wages and hours, and provide financial stability and significant relief.

For White Castle, the uncertainty of the last several years associated with the health care law in particular has impacted our ability to create jobs by forcing us to postpone expansion plans into new markets. The growth that drives job creation in our industry is put on hold, and so are the jobs.

### **The Overtime Regulations**

While businesses are still working to manage the ACA and its regulations, the Department of Labor just published new final Fair Labor Standards Act (FLSA) "overtime regulations" that become effective before the end of the year. These overtime regulatory burdens only add to the tremendous amount of uncertainty that new and expanding federal regulations have created over the last five years.

At the same time, the overtime regulations will have a negative impact on many employees that now benefit from the many advantages of exempt status. Nonexempt employees often have less workplace autonomy and fewer opportunities for flexible work arrangements, career training and advancement than their exempt counterparts. In addition, the FLSA's rigid rules with respect to overtime pay also make it complicated for employers to provide hourly employees with certain incentive pay and bonuses. Thus, in many cases employees, who are reclassified or classified as hourly due to this rule, may lose important benefits and opportunities.

Yet despite the broad impact, the time period allowed for comments was inadequate for a proper economic analysis. It would have been helpful for the regulated community to have had more time to review and comment on the proposed rules. In denying thousands of requests for an extension—from the U.S. Small Business Administration Office of Advocacy as well as thousands of employers—the Labor Department said it had held enough “listening sessions” with stakeholders prior to publishing the proposed regulations. The proposed changes were lengthy and complicated and an insufficient time was allowed for the data to be gathered and analyzed.

More importantly, the Department’s new minimum salary level is inappropriate for our industry and makes the overtime exemption inoperative in many parts of the country. The Department claims the new salary level threshold will not exclude from exemption a high number of employees who meet the required duties tests. When applied to my industry, the contrary is true. The proposed rules are a radical departure from the traditional formula used to set the minimum salary. They not only double the current salary target but also serve to eliminate the consideration of regional economies.

Most managers and crew supervisors in our industry would not meet the new salary level of \$47,476 a year. Historically, a key purpose of a set salary level has been to provide a method for screening out obviously nonexempt employees. In other words, the salary threshold should be set at a level at which the employees below it would clearly not meet a duties test. With these changes, the Department is upending this historic rationale and setting the salary level at a point at which all employees above the line would be exempt. This will greatly limit the number of employers in the restaurant industry who are able to use the exemption.

For example, the median annual base salary paid to crew and shift supervisors in our industry is \$38,000. Even those in the upper quartile at \$47,000 would be right at the threshold for exempt status under the Department’s new salary level. Likewise, the median base salary for restaurant managers is \$47,000, while the lower quartile stands at \$39,000.

These employees meet the duties tests but will become non-exempt under the new salary level. It is clear that, at least in reference to the restaurant industry (the nation’s second-largest private-sector employer), the new salary level will exclude from exemption an unacceptably high number of employees who meet the duties tests. The impact would be magnified in many regions of the country.

For the employee, a change to nonexempt status can lead to fewer opportunities for career advancement. Again, changing to nonexempt status requires employers—and employees—to watch the clock. For example, employees who have reached or are near 40 hours of work in a week may need to skip additional training or other career-enhancing opportunities, because the employer is not able to pay overtime rates for that time.

In our industry, the proposed minimum salary level would represent an outsized income for mid-level managers. These include assistant managers, sous chefs and other employees learning the position and moving up. The increase would be too large for many employers to

absorb, so those positions would end up being moved back to an hourly rate—a rate that would net them the equivalent of what they earn today with overtime accounted for. This may be an easy transition to make from a management and bookkeeping standpoint, but it removes a key part of the reason that exempt status was originally created—to encourage above-average fringe benefits, greater job security and better opportunities for advancement.

The Department estimated that 75 percent of newly overtime-protected employees will see no change in compensation and no change in hours worked based on the new regulations. However, in the restaurant industry salaried employees enjoy a number of benefits not available to hourly employees. Thus, in addition to getting paid a salary regardless of the fact that they may not be working over 40 hours a week, these newly overtime-protected employees could lose flexibility as well as benefits, including substantive bonuses, paid vacation, flex time, paid holidays, and health insurance.

With regard to bonuses, under the existing rules, employers that provide incentive payments to hourly employees must include those payments in the employees' "regular pay rate" for purposes of calculating overtime pay rates, even if the bonus is provided months after the overtime takes place. Faced with the difficult recalculation of overtime rates—sometimes for every pay period in a year—employers often simply forgo these incentive payments to nonexempt employees rather than attempt to perform the required calculations.

Finally, throughout its overtime regulations, the Department created the impression that salaried employees feel they are being taken advantage of by virtue of their exempt status. That is far from the truth. In reality, employees often view reclassifications to non-exempt status as demotions, particularly where other employees within the same restaurant continue to be exempt. Most employees view their exempt status as a symbol of their success within our industry.

When employees have been reclassified from exempt to nonexempt, there is very often a decline in employee morale, as this change is generally seen as a loss of "workplace status." Employees often believe they are being punished or demoted, and some even lose trust that their employer sees them as professionals. In an industry survey, forty five percent of retail and restaurant managers believe a change in employment status from salaried to hourly would make them feel they are working a job rather than pursuing a career; 86% believe their perceptions of themselves as managers would deteriorate in some way.

To make matters worse, in the final regulation the Department for the first time announced its plan to automatically increase the salary level by publishing a new threshold in the Federal Register—without a notice-and-comment period, without a Regulatory Flexibility Act analysis, and without any of the other regulatory requirements established by various Executive Orders. We believe these automatic salary level increases are not only illegal but will perpetuate bad policy.

In short, hourly pay and nonexempt status is appropriate for certain jobs, but it is not appropriate for all jobs; otherwise, there would be no exemptions to the overtime pay requirements.

## **The Cumulative Cost of the Regulatory Burdens**

Above, I present merely two examples on the wide range of federal laws and regulations that hinder business growth. A recent study for the Mercatus Center at George Mason University by Duke University economics professors Bentley Coffey and Pietro Peretto found that the cumulative effects of federal regulations between 1977 and 2012 created a considerable drag on the economy. They found that if regulations had been held constant at levels observed in 1980, the US economy would have been about 25 percent larger than it actually was as of 2012. This means that in 2012, the economy was \$4 trillion smaller than it would have been in the absence of regulatory growth since 1980.

Thus, there are plenty of additional examples outside of the major hurdles created by some of the requirements of the ACA and the new overtime regulations. For example:

- 1) The American with Disabilities Act (ADA) has no allowance for a violation to be resolved before it literally becomes a “federal case.” As the ADA is currently structured, a person who alleges an ADA violation can immediately file a complaint in Federal Court without prior notice to the business owner. Even a minor violation—one that a business would have gladly addressed—can now require a business to pay attorney’s fees and compensation to the plaintiff.
- 2) The new Occupational Safety and Health Administration (OSHA) recordkeeping rule limits an employer’s ability to conduct a drug test post-accident. Testing is allowed, but managers will first need to “determine” if they believed the accident was caused by the presence of drugs. The main reason for across-the-board testing was to eliminate subjectivity.
- 3) The Environmental Protection Agency’s (EPA) refrigerant bans are costing businesses in both equipment and maintenance by pushing new refrigerants when the technology is not readily and economically available. The EPA changed refrigerants in the 1990s, again in the 2000s, and again in the 2010s. Each time, the regulations have driven up the cost of doing business, instead of waiting for the right technology to be ready and then making the changes—saving everyone money. The “We do not care what it costs” attitude is also hindering business growth.

## **Conclusion**

As stated, restaurants run on narrow margins, and White Castle is no exception. In an environment where hard-working Americans are still struggling to make ends meet, we are facing record costs for labor and food—our two biggest investments—and now we are staring down the barrel of a wide range of regulatory costs. Beyond the direct costs, there is an equally daunting barrier of deciphering bureaucratic language written in a hieroglyphic text not even the most advanced “Google Translator” can interpret.

We are a nation of entrepreneurs—a nation of citizens seeking life, liberty and the pursuit of happiness who for generations have been the greatest problem solvers and entrepreneurs the

world has ever witnessed. Today, this nation of would-be problem-solvers is being stalked by the silent killer of a regulatory regime that strangles creativity in the crib.

In closing, I would like to state that we are not against increasing the overtime salary threshold, or against the ADA, OSHA, EPA, or regulations in general. We understand that individual regulations sometimes have a beneficial impact. However, regulations should make sense and encourage entrepreneurship, not just grow the bureaucracy. Policymakers should always consider the cumulative impact of new regulations and the potential detrimental effect on business growth, which, ultimately, would have an impact on American families and employees.

We are both proud of and grateful for the responsibility of serving America's communities—creating jobs, boosting the economy, and serving our customers. My industry is committed to working with Congress to find solutions that foster job growth and truly benefit our communities.

Thank you again for the opportunity to testify before you today and I look forward to your questions.