

Testimony of Kesh Ladduwahetty, Chair of DC for Democracy
Before the Committee of the Whole
Regarding B22-0913 - Tipped Wage Workers Fairness Amendment Act of 2018
September 17, 2018

My name is Kesh Ladduwahetty, and I am a DC voter who voted in favor of Initiative 77 fully understanding what it meant.

I am here on behalf of DC for Democracy, whose members voted twice to endorse One Fair Wage: first in 2016 in support of the \$15 minimum wage ballot initiative led by DC Working Families, and this year for Initiative 77. Our members also fully understood what Initiative 77 meant.

DC for Democracy supports Initiative 77 because the status quo fails the vast majority of tipped workers, including those who do not work in the restaurant industry, and we find the evidence compelling that Initiative 77 would help these workers.

We stand with the 4,220 DC waiters and waitresses who made an hourly wage less than \$11.86 and an annual wage less than \$24,680 in 2017¹. These are the DC waiters & waitresses in the bottom 50% of their profession. They need a higher minimum wage.

We stand with the 11,764 tipped workers who receive less than minimum wage of \$12.50 an hour².

We stand with the 8,214 workers in the restaurant and other food service industry whom the DC Department of Employment Services has determined are victims of wage theft, a full 25% of workers in the restaurant industry. They need One Fair Wage³.

DC for Democracy stands with the wait staff at Dennys, who have to work much harder to earn minimum wage, waiting on 6 customers per hour, compared to wait staff at Eddie V's, a fine dining restaurant⁴.

¹ BLS data for District of Columbia (May, 2017): https://www.bls.gov/oes/current/oes_dc.htm#00-0000 (downloadable spreadsheet).

² DC DOES Report (November, 2017): https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Minimum%20Wage%20Impact%20Study%20Report_r1.pdf

³ DC DOES Report

⁴ [FiveThirtyEight.com: <https://projects.fivethirtyeight.com/tipping-workers-minimum-wage/>]

We stand with the 19% of DC bartenders and servers who live in poverty⁵.

We stand with the 67% of restaurant workers who feel pressured to put up with sexually suggestive looks or gestures, and the 25% of restaurant workers who have been told to flirt with guests⁶.

We speak on behalf of the black restaurant workers, who accordingly to a 2014 study by sociologists Brewster and Lynn, make significantly less due to implicit bias in customer tipping, on the level of \$4 per hour less than white workers⁷.

These are the people the status quo exploits, and these are the people that 47,230 DC voters -- a decisive majority in every ward except Ward 3 -- were seeking to help when they voted for Initiative 77.

Clearly there are people who benefit from the status quo, namely restaurant owners and the best paid bartenders and wait staff at fine dining restaurants, who are largely white and male. It is not surprising that restaurant workers in the top 10% of the payscale like the status quo. But we should judge the status quo NOT by the satisfaction of the privileged few whom it benefits, but by the injustice towards the bottom 75% whom it has failed.

The poor, the underpaid, the exploited, the female, the people of color, the poorest waiters and waitresses, bartenders, parking lot attendants, bellhops, nail salon workers, food preparation workers, barbers -- these are the people that Councilmembers must keep in mind as you consider taking the momentous step of overturning the will of the voters in order to protect a status quo that was engineered by a failure of public policy, perpetuated by the lobbying might of the restaurant industry, and continues to exploit the vast majority of tipped workers.

Thank you.

⁵ The Case for Eliminating the Tipped Minimum Wage (May 25, 2016): <https://www.nelp.org/publication/case-for-eliminating-tipped-minimum-wage-washington-dc/>

⁶ Ibid

⁷ "Black Restaurant Workers get Smaller Tips" Tom Jacobs, September 4, 2014, <https://psmag.com/economics/racism-black-restaurant-waiters-service-industry-servers-get-smaller-tips-901211>



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Thank you Chairman Mendelson and the Committee of the Whole / DC Council, for giving me this opportunity to share my comments on Initiative 77. I am here to today to testify in favor of the full implementation of Initiative 77.

My name is Diana Ramirez and I am the Director of the Restaurant Opportunities Center of Washington, DC.

In 2016, ROC was part of the DC Fight for \$15 which was collecting signatures for Initiative 76 to increase the regular minimum wage to \$15 INCLUDING tipped workers. But Mayor Bowser, in an attempt to keep it off the ballot, proposed an increase in the Minimum Wage to \$15 an hour and only \$7.50 for tipped workers. Council then brought the tipped wage down further, to only \$5/hr by 2020. Restaurant were left behind, as we often are, from a full wage.

ROC members came together and filed a ballot initiative once again, this time, with the purpose of getting on the ballot. And that is what citizen's initiatives are for--to give a voice to constituencies who are often ignored, oppressed, and forgotten by their elected officials.

We collected almost forty thousand signatures to get on the ballot. We had conversations with people on the streets of DC who responded in mostly two ways "What?! Restaurant workers only make \$2.77/hr from their employer? I didn't know that--where do I sign?" or "Oh yeah, I used to be a tipped worker. Where do I sign?" And despite the Restaurant Association's greatest efforts to keep us off, we made it on the ballot.

Both sides of this issue campaigned, told their story, and asked DC Voters for their support. DC voters spoke LOUD AND CLEAR. WE WANT INITIATIVE 77! We want all workers to get the same minimum wage from their employer, regardless of their occupation. We don't want women to have to suffer from two times the rate of sexual harassment just to feed their kids. We don't want women tipped workers to rely on food stamps at 4 times the rate of the DC workforce. We don't want tipped professionals to continue working under this "separate but equal" system that is the sub-minimum wage for tipped workers that is a vestige of Jim Crow era.

The restaurant association's misleading 'Save our Tips' committee contributed hundreds of thousands of dollars to oppose Initiative 77. Some of the biggest financial backers of the misleading 'Save our Tips' committee were national and regional actors that have been brought to task around issues of wage theft. Just four companies, that are 'Save our Tips' donors, combined have wage and hour settlements of \$58.22 million dollars. Unsurprising

that they have been advocating and moving money to protect a wage system that breeds wage and tip theft.¹

'Save our Tips' donors have also made hefty political contributions during the most recently election cycle. The Washington Post recently found that Chairman Mendelson himself accepted more than \$30,000, from restaurant businesses and executives opposed to Initiative 77, for his reelection campaign, and even took it upon himself to provide a private prep session for workers testifying in opposition to Initiative 77.²

Throughout this process it has felt that we have faced unnecessary obstacles, when we have only been working to exercise our democratic rights. When we've only been working to earn a wage higher than three dollars an hour, when we've only been fighting to slowly increase tipped workers wages to what everyone else makes.

The majority of tipped workers, the majority of ROC's membership, the majority of voters, in most wards, were 'nonwhite.' In fact, the largest support for Initiative 77 came from primarily Black Wards 5, 7 and 8.³

DC's commitment to Fair Elections is about ensuring that voters of color and those typically disenfranchised from the political process are represented and heard. The move to repeal Initiative 77 is thus particularly disappointing. It stresses a commitment to pay to play politics at a moment when it feels, across the country, that our democracy is in peril and that communities of color are under constant attack.

The nail salon workers, the runners, the barbacks, valets, and other tipped workers **NEED YOUR HELP**. You have the opportunity to set things right by them. You have the opportunity to lead the nation in protecting some of the most vulnerable workers in our country.

The subminimum wage is a racist, sexist law that must change. The future of the , our our democracy, depends on it.

We have the opportunity to work together to create change and it's our obligation to do so.

¹See Appendix A.

²Nirappil, F. (September 14, 2018). D.C. Council to hold first hearing on repealing Initiative 77, the tipped wage hike Washington Post. https://www.washingtonpost.com/local/dc-politics/dc-council-to-hold-first-hearing-on-repealing-initiative-77-the-tipped-wage-hike/2018/09/14/dcddb6e6-b774-11e8-a7b5-adaaa5b2a57f_story.html?utm_term=.c7426e088f15

³Ibid.

Appendix A.

Save our Tips' campaign contributors have been found to *steal* workers' wages— they're unsurprisingly working to protect a wage system that breeds wage and tip theft.⁴

- Farmers Restaurant Group recently reached a **\$1.49 million dollar class-action settlement** —they were sued for violations of the tip credit, management even took a share of workers' tips.⁵
- Brinker International reached a **\$56 million dollar settlement** on a wage and hour class action lawsuit. The settlement resolved the claims of 120,000 class members.⁶
- Starr Restaurant's Talula's Garden, after being investigated by the Department of Labor, agreed to pay 63 workers nearly **\$400,000 in back pay and damages.**⁷
- Fig and Olive was sued by a collective of tipped workers for failure to pay its waitstaff federal and state minimum wage and failure to provide proper wages.⁸ Workers were awarded a **settlement of at least \$325,000.**⁹

⁴<https://efiling.oef.dc.gov/ContributionExpenditure/SearchResults>

⁵<https://tips-dc.org/d-c-restaurant-reaches-1-5-million-settlement-amid-tipped-pay-debate/>

⁶<https://tbowleslaw.com/2014/08/19/brinker-case-settles-for-56-million/>

⁷<https://www.phillymag.com/foobooz/2017/10/18/starr-olexy-wage-theft-statement/>

⁸<https://waiterpay.com/blog/fig-olive-restaurants-sued-for-pay-violations>

⁹https://www.pacermonitor.com/public/case/4530767/Corte_v_Fig_Olive_Founders_LLC_et_al

**Committee of the Whole
Public Hearing
Bill 22-913, Tipped Wage Workers Fairness Amendment Act of 2018
Monday, September 17, 2018**

Testimony of Ericka Taylor
Council Liaison, One Fair Wage Coalition

Good morning, Chairman Mendelson and Committee members. Thank you for calling this hearing today. My name is Ericka Taylor and I'm the Council Liaison for the One Fair Wage Coalition.

I'm here to urge you not to repeal Initiative 77. My reasons are numerous, but I'll only address a few. First, replacing the tipped minimum wage with one fair standard is a matter of equity. According to the national think tank, the Economic Policy Institute, DC tipped workers are predominantly women, and they experience a poverty rate nearly twice that of other workers. That demonstrates gender inequity. Additionally, people of color, who make up 66% of the tipped workforce, are often tipped less than their white counterparts, according to a report by Cornell University's School of Hotel Administration. That demonstrates racial inequity. Furthermore, data from the U.S. Department of Labor indicates that, compared to all other states, D.C. has the highest hourly wage gap between tipped and non-tipped workers, at a difference of \$9.86 an hour. That only reinforces DC's troubling status as the "state" with the highest level of income inequality in the country. The tipped minimum wage allows these disparities to persist.

The second point I'd like to make is that I've seen One Fair Wage work. I left DC to attend graduate school in the other Washington several years ago. As was my habit, I tipped 20% or more when I dined out, only to discover that Washington is a One Fair Wage state. Did my tipping habits change? Of course not. And I would hazard to guess that most of you, and most people, in general, don't tip a little less in Maryland than when you eat out in Virginia because Maryland's tipped employees receive a higher wage.

Some opponents of the initiative will point out that many fair wage states have always had pay equity, so their success isn't comparable as they've never had to transition from one pay model to another. New York, however, raised its tipped minimum at the end of 2015—and not only did the sky not fall, but “restaurant workers at full-service establishments saw their average salaries go up 6.4%, a larger increase than in any neighboring state,” according to a policy brief by the Institute for Policy Studies and Restaurant Opportunities Center. This shift didn't cause a decrease in employment, either. Instead full-service restaurant jobs went up 1.1%.

Eliminating the tipped minimum wage is not only the right thing to do, but evidence shows that tipped workers in One Fair Wage states have lower poverty levels than in subminimum wage states. Plus, the tipping rate in those locations is actually higher than in DC.

When this legislation comes up for a vote, please vote on the side of racial, gender, and economic equity. Thank you for your time. I'm happy to answer any questions.

Doug Foote - Initiative 77 - September 17, 2018

Good evening, councilmembers. My name is Doug Foote, and I've lived in D.C. for ten years. For four of those years, I worked on workers' rights issues at the union affiliate organization Working America.

Chairman Mendelson has said the purpose of this hearing is to determine whether or not Initiative 77 is a good policy. Other councilmembers have asserted that DC voters didn't understand Initiative 77 when we approved it by a wide margin in June.

What's missing from this debate is that one fair wage as a policy is not new or novel. Alaska, California, Hawaii, Minnesota, Montana, Nevada, Oregon, and Washington State have all implemented one fair wage. You'll hear more from experts on this later, but the restaurant industry is alive and well and the practice of tipping is alive and well in those states. What has changed is that the poverty rate among tipped workers has gone down.

Contrast this reality -- the actual, measurable experiences of eight states -- with the predictions of disaster from the No on 77 campaign. Our city was blanketed with signs urging us to vote NO to "save our tips," when this exact policy has not ended tips in any other state where it has been enacted.

Please also look at the coalition that supported 77. It ranges from unions like SEIU 32BJ to women's organizations like NOW to LGBT rights groups like Trans United Fund to racial justice groups like BYP 100 to immigrant rights groups, reproductive rights groups, and on and on.

Is it likely that all these groups were tricked into supporting something they didn't understand? Or is it more likely that they saw 77 as a time-tested policy solution to the high poverty rate among DC's tipped workers?

As a consumer, I want to go to restaurants, order drinks, take cabs, and more in a city where the people I interact with are being fairly compensated *by their employers* for their hard work, with tips as a gesture of thanks, not a necessity for survival.

As a DC voter, I want my elected leaders to look at data and concrete information as part of their decision-making, particularly when considering the very radical step of completely overturning the results of an election.

Last June, DC voters let solid research and clear evidence guide us to a moral vote in favor of fairness and dignity for servers, bartenders, busboys, bellhops, nail technicians, and everyone else in a tipped position.

The Council can serve us best by following this same path: Look at the evidence and respect the voters of DC. Do not overturn Initiative 77.

Testimony of Leo Gertner

National Employment Law Project

On B22-0913, “Tipped Wage Workers Fairness Amendment Act of 2018,” Which Repeals Initiative 77 and Preserves the Two-Tiered Wage System for Tipped Workers

Hearing before the Council of the District of Columbia

September 17, 2018

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Thank you, Chairman Mendelson and members of the Committee of the Whole for the opportunity to submit written testimony on B22-0913, "Tipped Wage Workers Fairness Amendment Act of 2018," which would repeal Initiative 77, a ballot initiative that voters approved in June that gradually raises the tipped minimum wage until it reaches \$15.00 in 2025 and fully eliminates the tip credit by 2026, guaranteeing one fair wage for all workers regardless of occupation.

My name is Leo Gertner and I am a staff attorney at the National Employment Law Project (NELP). NELP is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices across the country. Our staff are recognized as policy experts on a wide range of workforce issues, such as unemployment insurance, wage and hour enforcement, and—as is relevant for today's hearing—the minimum wage. We have worked with dozens of city councils, state legislatures and the U.S. Congress on measures to boost pay for low-wage workers and improve labor standards. We track both the economic experience of state and local jurisdictions that have increased their wage floor, and the academic research on the minimum wage. As a result, we have developed a strong expertise on the analysis of minimum wage policy.

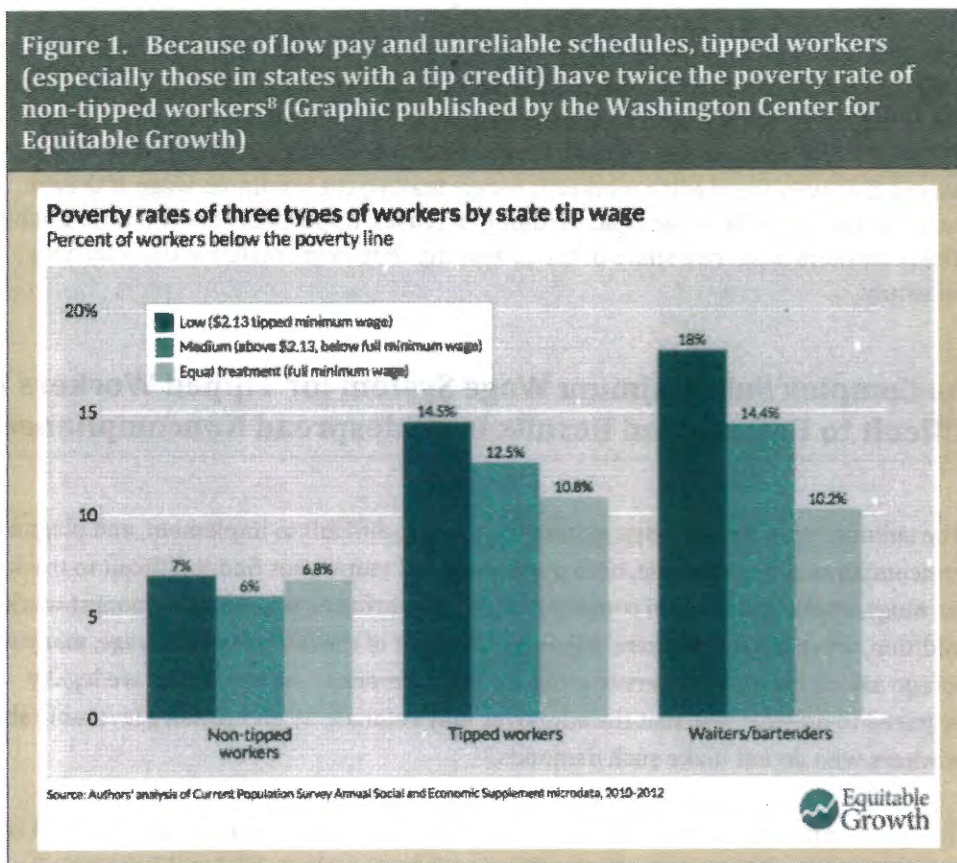
NELP testifies today against the repeal of Initiative 77 and in support of eliminating the subminimum cash tipped minimum wage so that tipped workers receive the full minimum wage directly from their employer. As evidenced by Initiative 77's approval, there is growing national momentum for raising pay for the nation's millions of tipped workers such as restaurant servers, food delivery workers, and many others at the heart of some of our fastest growing industries. As a result of the current two-tiered wage system, tipped workers earn low median wages, suffer from higher rates of poverty, and face unpredictability in their take home pay. Moreover, while employers are supposed to make up the difference when tips are not enough to bring a worker up to the full minimum wage, in practice, such tracking is difficult and compliance is spotty. D.C. should follow the lead of the seven states that have done away with the subminimum wage for tipped workers and who also enjoy thriving service industries.

Contrary to Restaurant Industry Claims, D.C.'s Tipped Workers Earn Low Wages and Suffer High Rates of Poverty Due to the Precariousness of Tipped Work

- According to the Economic Policy Institute's latest analysis of American Community Survey data, **the median hourly wage in the District for tipped workers is \$14.41, including tips.**¹ Servers and bartenders made slightly less at \$14.24.² This is compared to median hourly earnings of \$32.45 for non-tipped workers in the District.³ This means that many tipped workers are typically earning just enough in tips to bring them a little bit above the minimum wage—far below the types of high tips some in the restaurant industry claim to be the norm.
- Tipped work is inherently uneven and often unpredictable. While most of us expect to be paid the same for every day or hour we work, for tipped workers this is often not the case. For example, restaurant servers can earn substantially more on Friday or Saturday nights, but much less on other days of the week. Bad weather, a sluggish economy, the changing of the seasons, a less generous customer, and a host of other factors can also cause sudden drops in their tipped income and lead to economic insecurity.
- As a result of tipped wages and the precariousness of the tipped occupations, tipped workers in D.C. experience poverty at three times the rate of non-tipped workers.⁴ The overall poverty rate among non-tipped workers in D.C. is 4.5 percent.⁵ For tipped workers overall, it is 13.7 percent, while for servers and bartenders it is a bit higher at 13.9 percent.⁶ Disparities by gender and race show the treatment even among tipped workers is extremely

unequal. Women workers experience poverty at a rate of 15.7 percent compared to 11.8 percent for men, while Black tipped workers have a poverty rate of 18.5 percent compared to 12.1 percent for white workers.⁷

- In states with a tip credit system, poverty among tipped workers is more prevalent. According to data from 2010–2012, while the poverty rate for *non-tipped* workers ranged from 6.0 to 7.0 percent in states with a tipped subminimum wage, for *tipped* workers, the poverty rate jumped to more than twice that rate—between 12.5 and 14.5 percent. See Figure 1. Poverty among *servers and bartenders* in those states was even more alarming: 18.0 percent in states that follow the federal tipped rate of \$2.13, and 14.4 percent in states with tipped subminimum wages between the federal tipped floor and the full minimum wage. See Figure 1. *This means that in states with a tip credit, tipped workers are more than twice as likely to live in poverty as non-tipped workers.* In comparison, the poverty rates for tipped and non-tipped workers in One Fair Wage (equal treatment) states, while still in need of improvement, did not diverge as greatly from one another (Figure 1).



- Tipped workers are forced to live on unpredictable incomes and schedules. Their take-home pay fluctuates widely depending on the seasons, the shift they are given, and the generosity of patrons. The lack of stable incomes for tipped workers makes it difficult to plan a family budget.
- Due to the dual pressure of low or precarious pay and high costs of living, nearly half of all tipped workers in the U.S. are forced to rely on public benefits. According to research by the University of Berkeley and the Economic Policy Institute, nationwide, around 46 percent of *tipped workers* and their families rely on public programs—a significantly higher share than the 35.5 percent of *non-tipped* workers and their families who also rely on these programs.⁹

A Third of All Tipped Employees in D.C. Work Outside of the Restaurant Industry

- Approximately a third of tipped workers in D.C. do not work in the restaurant industry. These workers include hair stylists, manicurists, cosmetologists, bellhops, hotel concierges, taxi drivers, delivery drivers, parking lot and garage attendants, and car wash workers.¹⁰ As the public debate around Initiative 77 clearly showed, these workers are less visible in D.C.'s economy. They make the same \$3.89 per hour waiters and bartenders earn, but they work in industries where sometimes tipping is not widely adopted or consumers do not even realize that they are subject to a lower tipped wage rate.
- These tipped workers play an important role in making D.C. a vibrant city and tourist destination, providing crucial personal care, accommodation, and transportation services. And yet, like restaurant workers, they struggle to pay the rent and feed their families with unstable and meager incomes. For example, according to 2017 statistics, median wages for parking lot attendants in D.C. are \$12.09 an hour and for baggage porters, \$12.58. To put these wages into perspective, D.C.'s workforce as a whole earns a median wage of \$32.45 an hour.¹¹ The minimum wage in 2017 was \$11.50 until July 1 and \$12.50 after that.¹² That means that even the median worker is barely making the minimum wage, if they're earning the minimum wage at all. Without increases, tipped workers will be left behind. These workers deserve a share of the prosperity they help create for D.C.'s thriving economy.

The Complex Subminimum Wage System for Tipped Workers Is Difficult to Enforce and Results in Widespread Noncompliance

- The subminimum tipped wage system is complex, difficult to implement, and plagued by noncompliance. For example, both employers and employees find it difficult to track tip earnings, a task that is often complicated by tip sharing arrangements amongst workers. In addition, when tipped workers' earnings fall short of the full minimum wage, many will forego asking their employers to make up the difference—as employers are legally required to do—for fear that the employer may retaliate by giving more favorable shifts to workers who do not make such demands.¹³
- Given the implementation challenges inherent in the subminimum wage system, it is not surprising that a 2014 report by the Obama Administration's National Economic Council and the U.S. Department of Labor found that one of the most prevalent violations amongst employers is failing to properly track employees' tips and make up the difference between an employee's base pay and the full minimum wage when tips fail to fill that gap.¹⁴ A survey found that more than 1 in 10 workers employed in predominantly tipped occupations earned hourly wages below the full federal minimum wage, including tips.¹⁵
- Not surprisingly, the U.S. Department of Labor found an 84 percent noncompliance rate among the nearly 9,000 full-service restaurants it investigated from 2010–2012. Violations included tip credit infractions and other forms of wage theft, resulting in \$56.8 million in back pay for affected workers.¹⁶

The Lower Subminimum Wage for Tipped Workers is a Unique, Unfair, and Unnecessary Subsidy for Employers in the Restaurant Industry

- The intended purpose of tips is to reward good service rather than to serve as a substitute for the wages directly paid by employers. In states where a tip credit is allowed, however, tips have become a means for employers to transfer responsibility for paying employees' wages onto the customer. This mainly benefits employers in the restaurant industry and other service industries where the majority of tipped workers are employed. No other industries are subsidized this way.
- Employers in the restaurant industry are among the most avid users not only of the tipped subminimum wage, but also of the standard minimum wage, and they are among the least likely to offer workplace benefits—such as health insurance, paid sick leave, and paid holidays—making the industry one of the least generous.¹⁷
- The restaurant industry is one of the most profitable sectors of the economy. According to the National Restaurant Association, nationwide industry sales were expected to reach \$799 billion in 2017—equivalent to 4 percent of the U.S. gross domestic product.¹⁸ The industry employed 14.7 million workers last year, or roughly 10 percent of the nation's workforce, a number that is expected to increase by nearly 11 percent by 2027.¹⁹ These figures suggest a healthy and profitable industry that could withstand the gradual elimination of the tipped subminimum wage at the national level.

States Without a Subminimum Wage for Tipped Workers Have Fast-Growing Restaurant and Hospitality Sectors

- Seven states do not have a tipped subminimum wage. The seven One Fair Wage states are California, Nevada, Washington, Minnesota, Alaska, Oregon, and Montana. And, as noted above, many local jurisdictions—including Minneapolis, Seattle, and various cities and counties in California—that have adopted a \$15 minimum wage have done so without adopting a lower minimum wage for tipped workers.²⁰
- While restaurant industry lobbyists often argue that eliminating the tipped subminimum wage would hurt restaurants and their workers, the facts belie those claims. In particular, the restaurant industry in One Fair Wage states is strong and projected to grow faster than in many of the states that have retained a subminimum tipped wage system. According to projections by the National Restaurant Association (NRA), nationwide restaurant sales were expected to reach \$799 billion in 2017, a 4.3 percent increase over 2016. And according to their own projections, restaurant employment in the seven states without a tipped minimum wage will grow in the next decade at an average rate of 10.7 percent.
- Many of the states with the strongest restaurant job growth do not allow a tipped minimum wage for tipped workers, and require employers to pay tipped workers some of the country's highest base wages. For example, restaurant employment in California—which has no subminimum wage for tipped workers and is phasing in a \$15 minimum wage—is projected to grow by 10 percent during the 2018–2028 period.²¹ In California, the minimum wage is now \$10.50 per hour for small employers (25 or fewer employees) and \$11.00 for large employers (26 or more employees), and the minimum wage will reach \$15 for all employers by 2023.²² In Oregon, where the minimum wage will increase to between \$12.50 and \$14.75 by 2022,²³ and which has no tipped subminimum wage,

restaurant employment is projected to grow by 12.9 percent during that same period.²⁴ And in Washington State, where the minimum wage will increase to \$13.50 by 2020,²⁵ restaurant employment growth during the same period is expected to grow by 11.4 percent.²⁶ And in San Francisco in 2015, a year after the city began transitioning to a \$15 minimum wage, the Golden Gate Restaurant Association reported that the restaurant industry was thriving,²⁷ with sales and employment growing faster than in 2014—the year San Francisco adopted a \$15 minimum wage. Today, San Francisco's economy continues its positive trajectory, with the city's unemployment rate dropping to 2.6 percent in November 2017²⁸ (nearly 50 percent lower than its jobless rate three years earlier in 2014),²⁹ and restaurant employers voluntarily raising wages and benefits above the legal minimum in order to attract and retain talent.³⁰

- Moreover, a 2015 Cornell Hospitality Report looked at the impact of minimum wage increases on restaurant employment and business growth levels over twenty years across the United States. It found that raising the minimum wage (including the tipped wage) will raise restaurant industry wages but will not lead to “large or reliable effects on full-service and limited-service restaurant employment.”³¹

A One Fair Wage System in D.C. is a Matter of Basic Fairness

- A subminimum wage for tipped workers has not always existed. Until 1966, there was no federal subminimum wage for tipped workers.³² But with the 1966 expansion of the Fair Labor Standards Act (FLSA) to cover hotel, motel, restaurant, and other leisure and hospitality employees who had previously been excluded by the FLSA, the law was amended to allow employers to pay tipped workers a subminimum wage of 50 percent of the full minimum wage.³³ In 1996, tipped workers' pay decreased further when a Republican-controlled Congress raised the federal minimum wage from \$4.25 to \$5.15, but froze the tipped minimum wage at \$2.13. This policy decoupled the tipped wage from the full minimum wage for the first time in the history of U.S. wage law, setting up over two decades of a frozen minimum wage for tipped workers³⁴ in most of the nation.
- The gradual elimination of the subminimum wage for tipped workers is crucial to improving the lives and economic prospects of low-wage workers in D.C. Tipped workers in the city are disproportionately low-income and D.C. residents as well as workers of color, therefore the benefits of gradually raising and eventually eliminating the tipped minimum wage will be most felt by these workers.³⁵ Without raising the tipped wage, a significant share of the District's lowest-paid workers will continue to be at an increased risk of poverty and various forms of harassment and discrimination.³⁶ As inflation erodes the real value of the tipped wage, tipped workers will become progressively more dependent on the generosity of customers to earn their livelihoods and avoid poverty. D.C. tipped workers already suffer from the largest gap between the tipped and non-tipped wage in the country.
- The D.C. Council has a historic opportunity to preserve a popular law that brings fair pay for D.C.'s tipped workers and addresses the economic insecurity that workers face when their income depends on tips left by customers. To repeal Initiative 77 would be a step backwards for D.C.'s hard-working service workers and for D.C.'s thriving economy.

Endnotes

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TIPPED WAGE WORKERS FAIRNESS AMENDMENT ACT OF 2018 (BILL 22-913)

Testimony for Dr. Sabiyha Prince, Coordinator, Membership and Political Education, Empower DC

Good afternoon and thank you for your time. My name is Sabiyha Prince – I am an urban anthropologist representing Empower DC and I count myself among the majority who voted for initiative 77 – to end the sub minimum tipped wage. I was motivated to do so for a number of reasons – primarily because of what I’ve learned from those whose life’s work is doing this research and standing with workers for social justice. I am also here because of the shared experience of friends and family who rely on tips for their survival – here I am referring to workers who receive no subsidies from parents or savings or any form of inheritances.

Despite the disinformation campaign put forth by representatives of the restaurant industry there are reliable data compiled by social scientists and historians on this issue. What we know is that tipped restaurant workers are more than twice as likely as other workers to fall under the federal poverty line – according to a study by the Economic Policy Institute and the Center on Wage and Employment Dynamics in 2017. This is because the average weekly earnings for an employee in a full service restaurant is \$274 based on Bureau of Labor Statistics data.

Currently there are seven states in the US, including CA, WA, OR, and MI, that do not allow differential treatment of the tipped workforce and these are referred to by experts not paid by the restaurant industry as **equal treatment** or **fair-wage states**. In these states workers receive a full, regular state minimum wage plus tips and there has been no evidence of customers tipping less or any documentation of decreases in net hourly wages and the growth in this industry – measured by the appearance of new restaurants - continues at excellent rates.

Research also shows that higher minimum wages do not decrease employment and that businesses have been able to absorb any additional labor costs incurred by wage fairness through increased productivity as well as reductions in turnover.

So that is a portion of the national picture. Looking locally, in DC, women, along with Black and Latinix workers, are disproportionately harmed by the fixed, low hourly rate for tipped workers hence they also have the most to gain from the increase that the public voted for. People of color in this rapidly gentrifying and costly city are keenly aware of this.

Then you add to this scenario the finding that the actual act of tipping has been found to be discriminatory – white servers receive larger tips than their Black counterparts for the same quality of service - we are discussing proposals with profound implications for ending racist practices. These factors need to be considered along with the fact that white servers at high end restaurants also earn more and drive up the income averages in this city in ways that are not reflective of all workers' earnings. The take away here is that there are subsets of servers who do well and this highlights the significant amount of inequality within Washington's wait-staffs; indicators that also illuminate the local, racialized discrepancies in opinion and votes around this issue.

Raising the wages of these particular workers pushes back against racism and gender inequality, mitigates poverty, and puts more money into the hands of local, working class consumers who most often spend their money with area businesses. It also has a trickle-down effect generating positive impacts for their households and children. Moreover, honoring the votes of DC residents is, of course, democratic but is also historically contextualizes a practice

that has its roots in the Jim Crow era where Black workers had to grin and suffer humiliation to ingratiate themselves to white customers reluctant to pay them a decent wage after slavery.

I advocate for respecting the will of the voters and looking more closely at what progressive locales have done across the country. I am concerned by the idea that we may allow the restaurant industry to set policy and mute the voices of the people. I'm concerned about the cases of wage theft and the vulnerability of low wage women workers in these workplaces. And finally, I urge you to consider the extensive research done by the Institute for Policy Studies and other think tanks who have a reliable track record around advocacy and civil and human rights. Thank you.

D.C. Restaurant Reaches \$1.5 Million Settlement Amid Tipped Pay Debate

A class-action lawsuit against a D.C. institution underscores the need for one fair wage.

September 3, 2018 | Negin Owliaei



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Farmers Restaurant Group, which manages some of the most popular restaurants in the D.C. metro area, agreed last month to pay out \$1.49 million to settle a class-action lawsuit with nearly a thousand of its employees. Workers in D.C. and Maryland say they were systematically underpaid and denied sick leave.

]

The allegations also include violations of the tip credit, which allows employers to pay workers a substandard tipped wage — currently [\\$3.89](#) in D.C. — while they're doing work that will bring in tips. Farmers Restaurant Group workers said they were paid the tipped wage while doing untipped work, and that they were required to share the tips they earned with their managers. Both practices run against Department of Labor [requirements](#).

The timing of the settlement couldn't be more damning for the many D.C. restaurant owners who have tried to push back against a recent ballot initiative that would eliminate the subminimum tipped wage. Voters passed the initiative to end the tip credit and mandate employers pay all workers a full minimum wage by healthy margins.

But the D.C. city council has already expressed interest in ignoring the will of the people and [overturning the proposition](#). While the council is unwilling to end the subminimum tipped wage, lawsuits like this one underscore the need to end a two-tiered system. The tip credit leaves workers vulnerable to wage theft, even as their employers prosper.

After all, Farmers Restaurant Group isn't suffering by any measure. Founding Farmers, the group's star restaurant, has a [city record](#) number of Yelp reviews. It's been one of the [most-booked](#) restaurants in the country for years, enough to warrant inclusion on the list of America's [highest-grossing](#) independent restaurants. Farmers Restaurant group was also certainly flush with enough cash to throw thousands of dollars in donations to the anti-77 campaign.

The restaurant group also sells itself on a purported community ethos they bring into their business. "Mindfulness, honesty, and accountability are ingrained in us because it is the farmer's way," they state on their website. Daniel Simons, one of the owners told [The Washingtonian](#) that their love for employees was key to the restaurant's popularity. To that end, the restaurant has an in-house masseuse available to staff.

When the allegations were initially reported, Simons told [The Washington Post](#) that he was "super confident we take great care of [their] people." Wage actions like the lawsuit were common among restaurants, he said, and "often unrelated to company culture, intent, or actual well-being of the staff." The plaintiffs, some of whom will receive awards topping \$25,000, would likely disagree. The restaurant group [denies](#) the allegations and says the payout isn't an admission of wrongdoing.

It might be surprising to D.C. restaurant goers that a city favorite that markets itself on its ethics has been accused of systematically abusing the rules. But it's likely not a shock to tipped workers across the country who are [especially prone](#) to wage theft due to the tip credit.

I spoke with several tipped workers ahead of the district's vote on Initiative 77, some of whom had dealt with wage theft on the job. TJ — a pseudonym used to protect her from retaliation on the job — told me about her experience recovering wages withheld by her employer. She says she went to the Department of

Employment Services immediately after her manager refused to pay her the money she'd rightfully earned on the job.

Luckily, TJ was acutely aware of the dangers of wage theft and had been carefully documenting her pay stubs and hours. Her caseworker said it was rare for workers to come in with such detailed notes about what they were owed, which made it easier for her to recoup her wages.

"I'm one of the lucky few that got her money back," TJ said, "and it's only because I kept meticulous records."

While TJ's an immigrant, she's also an U.S. citizen — which she says was immensely helpful. After hearing about her ordeal, the back of the house workers at her restaurant were quick to ask for her advice. TJ says their manager already "played fast and loose" with their paychecks. Immigrant workers often faced many additional barriers to recovering wages, from language difficulties to intimidation.

At best, some were made to feel that employee services couldn't provide them with assistance if they weren't U.S. citizens. At worst they were told, TJ relays, that questioning their pay could affect their immigration status. Given the hostile national conversation around immigration and the preponderance of immigrants at restaurants, it's not surprising that immigrant workers might not feel comfortable approaching an enforcement agency to recoup lost funds.

TJ is resolved to help other people on the staff understand the law and their rights. But in the restaurant industry, exploitation can be the norm. On top of that, the most vulnerable workers will already have the least amount of recourse to protect themselves. For TJ, it's a fundamental problem with how restaurants operate, and explains why tipped workers are so susceptible to wage theft. "The onus is always on the employee to make sure we're getting paid."

Negin Owliaei is a researcher at the Institute for Policy Studies.

Hello,

My name is Sean Davis and I am here on behalf of the National Consumers League to urge the DC City Council to respect the will of the DC electorate and implement Initiative 77. Founded in 1899, the National Consumers League wrote the first minimum wage laws in the United States and including the 1918 law guaranteeing a minimum wage for women and children working in the District of Columbia, which was overturned by the Supreme Court.

According to the Washington Post, to live comfortably a D.C. resident has to be making at least \$80k. The average base salary for a waitress in D.C. is \$27,000 (including tips). This salary is clearly not nearly enough to live in D.C. let alone comfortably. To provide further context, the 1966 amendments to the Fair Labor Standards Act (FLSA) provided for a 50 percent “tip credit” for employers of tipped workers, allowing tipped workers’ income from tips to be counted toward half the regular minimum wage guaranteed to workers by the FLSA, with the newly established subminimum wage comprising the other half. This provision did not change until President Clinton signed into law the Minimum Wage Increase Act of 1996. The act eliminated the FLSA provision that required the tipped minimum wage to remain a certain percentage of the full minimum wage; however, this act only left restaurant workers further behind as the tipped minimum wage no longer was coupled with the regular minimum wage.¹ Additionally, the majority of restaurant workers are women and/or a people of color and while unbeknownst to some, the very custom of tipping is rooted in discrimination and racism.²

Initiative 77 corrects that injustice. For these workers, making a decent reliable wage is the difference between having enough to survive and being one paycheck away from being homeless. Restaurant workers should not have to depend on customers’ pre-conceived notions on tipping to make up their salary, which as we all know is not truly enough to live and thrive in Washington D.C. in the first place. Lastly, 47,230 D.C. residents voted in favor of Initiative 77, with a clear 55.74% majority. As a Washington D.C. native, I urge the DC City Council to consider the message that you are sending to D.C. and to the nation. Don’t repeal Initiative 77 thank you.

¹ Sylvia Alighetto and David Cooper. Twenty-three years and still waiting for change. Economic Policy Institute. July 10, 2014 <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>

² Id.

Hello Councilmembers. I'm honored for this opportunity to speak today, in support of Initiative 77. I'm Taun Sterling (a Ward 5 resident), Communications Associate at the National Consumers League, a private non-profit advocacy group that has represented consumers and workers on marketplace and workplace issues since its founding in 1899.

I'm a recent transplant from Portland, OR, where I worked in the restaurant industry during and in-between interning. While there, I worked in a number of different positions at a few establishments. I've been a waiter, a dishwasher, a bike courier, a prep cook and freelancer for a food service and hospitality group. As you may be aware, Oregon does not have a subminimum wage, yet remains one of America's most vibrant and bustling food scenes. Because I was making standard minimum wage, I wasn't at the mercy of inconsistent tips or the constant fight for profitable shifts.

I was lucky enough to be able to make work in the industry work for me. I had roommates to save on housing costs and learned to live frugally. And thankfully rarely had need of healthcare services. These factors enabled me to build up enough financial padding so that an unexpected expense of a few hundred dollars would not be catastrophic for me.

But some of my colleagues weren't so lucky. And if you add a child or a chronic illness into the mix, things get exponentially more difficult.

The poverty rate of tipped workers in DC is more than three times the poverty rate of non-tipped workers. And the poverty rate of black tipped workers, in particular, are even higher¹.

In DC, 73 percent of tipped workers are (that's those in the restaurant industry and elsewhere) workers of color, nearly half are black workers, and 32 percent are immigrants². And these that work full-time year-round earn nearly 25 percent³ less than white workers in the same occupation.

It's clear to me that, should this initiative be implemented, it would serve to raise up our communities of color and dissolve some of the gender and racial inequalities faced in the hospitality and food service industries. It will also combat the effect that the current "separate but equal" wage system has on public perceptions of tipped professions as being anything other than professional occupations.

I urge the council to act, not in favor of the thriving minority, but in the interest of hard-working men and women who remain financially fragile despite their best efforts. They shouldn't serve at the mercy of the unpredictability that comes with tipped wage jobs.

Voters have made their choice, please respect it. Thank you all for your time.

¹ Seven Facts About Tipped Workers and the Tipped Minimum Wage
<https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>

² Same as 1st

³ Same as 1st