



**Testimony Concerning S.B. 32: *An Act Concerning Working Families' Wages***

TESTIMONY OF KAITLIN KONKEL, LAW STUDENT INTERN,  
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ON BEHALF OF CONNECTICUT IMMIGRANT RIGHTS ALLIANCE

February 18, 2014

Chairwoman Osten, Chairman Tercyak, and distinguished members of the Committee:

My name is Kaitlin Konkell, and I am here on behalf of the Connecticut Immigrant Rights Alliance (CIRA), a statewide coalition of immigrant, faith, labor, youth, community, business, and ally organizations. I am a student at Yale Law School and a member of the Worker and Immigrant Rights Advocacy Clinic, working under the supervision of attorneys Michael Wishnie and Nicole Hallett to represent CIRA.<sup>1</sup>

**CIRA strongly supports raising the minimum wage to \$10.10.** However, in its current form, S.B. 32 denies a fair increase to some of the most vulnerable low-wage workers and their families. While S.B. 32 raises the minimum wage for workers as a whole, it leaves the tipped minimum wage—the wage rate that employers must pay servers and other restaurant and hotel workers who receive tips—at only 63.2% of the minimum wage. **S.B. 32 should set the tipped wage at a minimum of \$7.07, which would be 70% of the full minimum wage.**

**Who Are Connecticut's Tipped Restaurant and Hotel Workers?**

Tipped workers make up a large part of the state's workforce. In the first quarter of 2013, there were over 27,000 waiters and waitresses in Connecticut.<sup>2</sup> In the same period, the median wage for waitstaff was \$9.26.<sup>3</sup> These workers are overwhelmingly low-wage workers. More than half of tipped workers made less than \$10.10 per hour, the minimum wage proposed in S.B. 32.

Tipped workers are adults supporting families. Nationally, 88% of tipped workers are older than 20.<sup>4</sup> The majority of tipped workers depend on a stable wage to meet real-world responsibilities, including rent, utilities, and childcare expenses.

Tipped workers are disproportionately female. Nationally, 72% of all tipped workers are women.<sup>5</sup> The typical full-time, year-round, female restaurant or hotel worker is paid only 79% of what her male counterpart earns. Female servers are paid only 68% of what their male counterparts earn, which results in average annual incomes of \$17,000 versus \$25,000.<sup>6</sup> A lower tipped wage contributes to gender inequities in pay.

Tipped workers are struggling. The poverty rate for servers is three times the national average, and they are twice as likely to depend on food stamps.<sup>7</sup> This higher poverty rate places a burden on taxpayers in the form of government benefits.<sup>8</sup>

### **What Is the Current Wage Rate for Tipped Workers?**

While tipped workers must be paid the minimum wage, employers are allowed to apply a tip credit to their earnings. The tip credit is the percentage of pay that can come from customer tips, rather than the employer. Together, the employer's portion (the tipped wage) and the customer's portion (the tip credit) make up a tipped worker's wage. Larger tip credits are better for restaurant and hotel owners, since they allow employers to spend less on employee wages and shift more of the burden to tipping customers. Smaller tip credits are better for workers, since the employer is responsible for a higher fixed wage, and any tips earned above that go directly to the employee.

The most recent minimum wage legislation, S.B. 387, raised the minimum wage for Connecticut workers, but it excluded tipped restaurant and hotel workers from any increase. By expanding the employer tip credit at the same time it increased the minimum wage, S.B. 387 effectively froze the minimum wage for these workers at \$5.69 per hour.<sup>9</sup>

The legislature should revisit this determination. The exclusion of tipped workers from S.B. 387 was enacted with no debate and little public attention. In the course of the proceedings, no representative of tipped workers spoke or submitted written testimony.<sup>10</sup> There was no analysis of the impact on tipped workers. On the contrary, the only testimony about the tipped wage came from restaurant owners and the Restaurant Association, all of whom spoke against the bill and advocated for a lower tipped minimum wage.<sup>11</sup>

### **Why Does the Tipped Minimum Wage Matter?**

A low tipped minimum wage can undermine the fair minimum wage. For low-wage workers like waiters and waitresses, every dollar counts. In the restaurant industry, where tips fluctuate, a fair base wage guarantees workers a predictable income every week, regardless of how much they receive in tips. While tips change from week to week, rents and bills remain constant.

A fair tipped wage is also necessary to protect consumers. Many customers don't know that there is a lower minimum wage for tipped workers, or that their tips make up part of a worker's core wage, rather than a bonus on top of it.<sup>12</sup> Powerful groups like the Restaurant Association capitalize on this, advocating for high tip credits as a form of "secret subsidy" to employers. Customers believe they are rewarding the worker for good service, but their tips go straight to the employer's pockets without raising workers' pay.

Finally, the tipped minimum wage matters because tracking wages earned from tips is difficult, and employer violations are common. While employers are required to make up the difference when tipped earnings fall short of the full minimum wage, this rule is largely ignored.<sup>13</sup> A tipped minimum wage is not irrelevant: it ensures that workers with variable earnings receive a stable base income, and that they receive this *from their employers*—not customers who leave cash on the table—in a way that can be documented and enforced. This safeguard is especially important in Connecticut, where union density in the restaurant and hotel sector is low.

Indeed, CIRA fully supports enforcement and tough penalties. In addition to supporting a fair tipped minimum wage, CIRA strongly supports another bill in front of the committee today, H.B. 5071—an act that will make double damages mandatory for employers who do not pay workers lawfully. H.B. 5071 will ensure that tipped workers who are victims of wage theft can collect amounts owed to them.

### **Has the Tip Credit Always Been the Same?**

No. In fact, in recent years, special interest groups have used the tip credit as a tool to chisel away at the fair minimum wage. For example, last year, food delivery employers petitioned the Department of Labor, asking that delivery workers be re-classified as tipped workers and therefore be subject to the tip credit.<sup>14</sup> It is easy to see why the tip credit is attractive to employers: without reducing employee hours or responsibilities, it reduces employer costs by allowing them to pocket money from customers who believe they are rewarding good service.

Efforts like these are part of a national strategy by the restaurant industry. Across the country, lobbyists for the restaurant and hotel industry have attempted to freeze or cut the tipped minimum wage in almost every state where a minimum wage increase had been proposed, including Hawaii, Minnesota, and New York.<sup>15</sup> In most states, they have not succeeded. For example, in New York, while industry lobbyists prevailed upon the state senate to deny tipped restaurant and hotel workers an automatic increase, the legislature instructed Governor Andrew Cuomo to increase tipped wages by regulation.<sup>16</sup>

Last year, in Connecticut, the industry succeeded in expanding the tip credit and widening the gap between tipped workers and the rest of the workforce. Before S.B. 387, employers were responsible for 69% of tipped employees' pay. Now, after aggressive industry lobbying to expand the tip credit, employers are responsible for only 63.2% of the wage. At best, this shifted the burden of paying tipped workers from employers to customers; at worst, it lowered tipped workers' fixed wage without providing a corresponding step-up in enforcement, leading to more widespread violations of the minimum wage laws.

### **How Can We Help Tipped Workers?**

Increasing the minimum wage to \$10.10 per hour is critical to raising the standard of living for Connecticut workers and their families. However, setting the tipped wage for restaurant and hotel workers at the new, restaurant industry-approved rate of 63.2% unnecessarily disadvantages some of the state's most vulnerable workers. A low tipped minimum wage establishes that special carve-outs that undermine the fair minimum wage are acceptable. Classifying some employees as "tipped workers" allows employers to freeze their wages, even when there is an overall increase in the minimum wage. This is precisely what happened with S.B. 387.

**S.B. 32 should set a tipped minimum wage equal to at least 70% of the full minimum wage.** This would bring Connecticut in line with the national proposal, the Fair Minimum Wage Act of 2013, which all of Connecticut's U.S. Senators and Representatives (Senators Blumenthal and Murphy, and Representatives DeLauro, Esty, Courtney, Himes, and Larson) support.

A tipped wage of 70% would also return Connecticut to its position as a leader among the states—although there is certainly more to be done. Ten states have set the tipped worker wage at a higher percentage of the full minimum wage than Connecticut: California (100%), Washington (100%), Oregon (100%), Nevada (100%), Montana (100%), Minnesota (100%), Arkansas (100%), Hawaii (97%), West Virginia (80%), and North Dakota (67%).<sup>17</sup> The same options—eliminating the tip credit or setting it at a high percentage of the full minimum wage—are available to Connecticut. **Connecticut can and should be a leader in setting a fair tipped wage.**

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

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<sup>1</sup> The views stated here do not purport to represent the opinions of Yale Law School, if any.

<sup>2</sup> Connecticut Dep't of Labor, *Connecticut Labor Market Information* (Nov. 30, 2013).

<sup>3</sup> Connecticut Dep't of Labor, *Labor Market Information, Waiters & Waitresses* (Nov. 30, 2013).

<sup>4</sup> Sylvia A. Allegretto & Kai Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, ECONOMIC POLICY INSTITUTE & INSTITUTE FOR RESEARCH ON LABOR AND EMPLOYMENT AT UNIVERSITY OF CALIFORNIA AT BERKELEY (February 23, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> RESTAURANT OPPORTUNITIES CENTER UNITED, *TIPPED OVER THE EDGE: GENDER INEQUITY IN THE RESTAURANT INDUSTRY* (February 2012).

<sup>7</sup> Saru Jayaraman, *Raise Base Wages*, N.Y. TIMES ROOM FOR DEBATE (June 23, 2013).

<sup>8</sup> RESTAURANT OPPORTUNITIES CENTER UNITED, *supra* note 6.

<sup>9</sup> Conn. Act. 13-117 (2013). Previously, employers had been permitted to apply a tip credit of only 31%, and were required to pay tipped workers 69% of the minimum wage (equal to \$5.69/hour). Last year, S.B. 387 raised the tip credit along with the minimum wage, expanding it to 36.8%. Employers are now obligated to pay workers only 63.2% of the minimum wage.

<sup>10</sup> LABOR & PUBLIC EMPLOYEES COMMITTEE, *JOINT FAVORABLE REPORT ON AN ACT INCREASING THE MINIMUM FAIR WAGE, SB-387* (March 19, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> Mark Bittman, *A Valentine for Restaurant Workers*, N.Y. TIMES (Feb. 13, 2014) ("many well-educated professionals, even high-ranking city officials, don't know about [the tipped minimum wage]").

<sup>13</sup> Bittman, *supra* note 12; ASPEN INSTITUTE, *REINVENTING LOW WAGE WORK: IDEAS THAT CAN WORK FOR EMPLOYEES, EMPLOYER, AND THE ECONOMY 2* (2011); RESTAURANT OPPORTUNITIES CENTER UNITED, *BEHIND THE KITCHEN DOOR: A MULTI-SITE STUDY OF THE NATION'S RESTAURANT INDUSTRY 69-102* (2011). *See also Shahriar v. Smith & Wollensky Restaurant Group*, 659 F.3d 234 (2d Cir. 2011) (employer pooled tips with non-tipped employees and failed to compensate tipped workers); *Penn v. Outback Steakhouse of Florida*, 913 A.2d 1160, 1172 (employer did not record amount of gratuities claimed against tip credit).

<sup>14</sup> Petition for Declaratory Ruling and Petition for Regulation, *In re Amaral Brothers Pizza*, Conn. Dep't of Labor (Oct. 16, 2013).

<sup>15</sup> RESTAURANT OPPORTUNITY CENTER, *REALIZING THE DREAM: HOW THE MINIMUM WAGE IMPACTS RACIAL EQUITY IN THE RESTAURANT INDUSTRY AND IN AMERICA 7* (June 19, 2013).

<sup>16</sup> Memorandum from the National Employment Law Project, et al. to Governor Dannel P. Malloy (May 22, 2013).

<sup>17</sup> United States Dep't of Labor, *Minimum Wages for Tipped Employees* (January 1, 2014).