

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Testimony Concerning S.B. 858: *An Act Concerning Employees Who Customarily and Regularly Receive Gratuities and the Fair Minimum Wage*

TESTIMONY OF JACOB C. GOLDBERG, LAW STUDENT INTERN,
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ON BEHALF OF CONNECTICUT WORKING FAMILIES ORGANIZATION

March 5, 2015

Chairman Gomes, Chairman Tercyak, and distinguished members of the Committee:

My name is Jacob Goldberg, and I am here on behalf of the Connecticut Working Families Organization (“WFO”). I am a student at Yale Law School and a member of the Worker and Immigrant Rights Advocacy Clinic, working under the supervision of attorney Michael Wishnie to represent WFO.¹

WFO strongly supports the passage of SB 858. As currently phrased, this bill will reduce Connecticut’s “tipped credit” to 35 cents per hour. While WFO believes that this version is timely and necessary, WFO supports a stronger, simpler version of the bill. WFO believes the bill should eliminate the “tip credit” from Connecticut’s minimum wage—ending the practice of paying waiters, waitresses, bartenders, and other tipped workers a sub-minimum wage. WFO believes that the bill should stipulate that gratuities are the property of the employees for whom they are intended, protecting these workers’ earnings. Finally, WFO believes that the bill should ensure that employers do not take credit card fees out of tipped workers’ wages.

WFO believes that a strong version of SB 858 will provide clarity to the Connecticut Minimum Wage Act and protect many low-wage service workers in Connecticut, especially women, who are the significant majority of tipped workers.

Which Workers Will Benefit from SB 858?

SB 858 should ensure that service workers who rely on tips are not paid a sub-minimum wage. Tipped workers make up a large part of the state’s workforce, and they are overwhelmingly low-wage workers. In the first quarter of 2014, there were nearly 27,000 waiters and waitresses and over 7,000 bartenders in Connecticut.² In the same period, the median wage was \$9.23 for Connecticut waitstaff and \$9.17 for bartenders.³ The median annual wage for Connecticut waitstaff was \$19,206; for bartenders, it was \$19,065.⁴

Tipped workers are mostly adults supporting families. Nationally, 88% of tipped workers are older than 20.⁵ 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.⁶ 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 \$25,000.⁷ 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.⁸ This higher poverty rate places a burden on taxpayers in the form of government benefits.⁹

Why Should Tipped Workers Receive the 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. SB 858 will ensure that tipped workers receive the same wage protections as all other Connecticut workers.

A minimum wage for tipped workers 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.¹⁰ Customers believe they are rewarding the worker for good service, but the first portion of their tips go straight to employers without raising workers' pay. SB 858 will ensure that consumers who tip are providing extra pay to their servers, not subsidizing employers who have undercut wages.

Finally, a separate tipped minimum wage causes confusion for employers and employees 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.¹¹ A recent White House report found that more than 1 in 10 workers in predominantly tipped occupations report hourly wages below the full federal minimum wage, including tips.¹²

A Sub-Minimum Wage Threatens Labor Standards for All Connecticut Workers

A lower minimum wage for tipped workers undermines the fair minimum wage for all workers. In recent years, employers have tried to use the tip credit as a tool to chisel away at the fair minimum wage. For example, in 2013, 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.¹³ Other employers may unlawfully attempt to pay their workers the tipped sub-minimum wage rather than Connecticut Minimum Wage.

Employer efforts to pay a sub-minimum wage 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 when a minimum wage increase had been proposed, as they did in 2014 in Hawaii, Minnesota, and New York.¹⁴ In most states, restaurant industry lobbyists have not succeeded.

The industry has used this tactic successfully in Connecticut, however, in the past. In

Connecticut in 2013, the industry succeeded in expanding the tip credit and widening the gap between tipped workers and the rest of the workforce. Before 2013, employers had to pay tipped workers 69% of the state minimum wage. Now, after aggressive industry lobbying, employers have to pay tipped workers only 63.2% of the minimum wage. At best, this change shifted the burden of paying tipped workers from employers to customers. At worst, it lowered tipped workers' fixed wages without improving enforcement of the law that requires employers to make up the difference when tips fall short, leading to more widespread violations of the minimum wage laws.

Connecticut Can Join Other States and Be a Leader in Protecting Tipped Workers

Other states and certain sectors of the federal government have recognized that tipped workers deserve the same basic labor protections as other workers. For example, in New York, a wage board recently increased tipped workers wages to \$7.50, or about 85% of the state's full minimum wage.¹⁵ Seven states that have vibrant restaurant industries—California, Washington, Oregon, Minnesota, Montana, Alaska, and Nevada—have no tipped sub-minimum wage.¹⁶ The President has supported raising the federal tipped minimum wage in large part because the requirement that employers make up the difference “is difficult to enforce.”¹⁷

SB 858 Closes Loopholes in the Current Law and Ensures that Workers Will Receive Their Tips

SB 858 should provide that tips are the property of employees for whom they are intended. Currently, no provision in Connecticut law confirms that gratuities intended for service workers are the property of these employees. This statute would bring Connecticut in line with federal regulation, which already provide that tips are property of the employees who receive them.¹⁸

SB 858 should also ensure that employers may not take credit card fees out of tips that belong to an employee and must transmit tips paid through credit cards no later than the following payday. This provision ensures that workers will receive gratuities no matter the method of payment from the customer. It ensures that workers can receive the entire amount of the gratuities intended for them.

SB 858 should prevent erosion of the minimum wage in Connecticut. It should provide clarity in labor standards: workers, employers, and customers should no longer be confused about what amounts are owed tipped workers, and inadvertent violations of the law will be curtailed. Finally, this bill should ensure that many low-wage Connecticut service workers—who have been left behind in previous minimum wage increases—can enjoy the wage protections afforded all Connecticut workers.

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

² Connecticut Dep't of Labor, *Connecticut Labor Market Information* (February 27, 2015).

³ Connecticut Dep't of Labor, *Labor Market Information, Waiters & Waitresses* (February 27, 2015).

⁴ *Id.*

⁵ 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).

⁶ *Id.*

⁷ RESTAURANT OPPORTUNITIES CENTER UNITED, *TIPPED OVER THE EDGE: GENDER INEQUITY IN THE RESTAURANT INDUSTRY* (February 2012).

⁸ Saru Jayaraman, *Raise Base Wages*, N.Y. TIMES ROOM FOR DEBATE (June 23, 2013).

⁹ RESTAURANT OPPORTUNITIES CENTER UNITED, *supra* note 6.

¹⁰ 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]”).

¹¹ 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).

¹² The White House, “The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage” (March 2014).

¹³ Petition for Declaratory Ruling and Petition for Regulation, *In re Amaral Brothers Pizza*, Conn. Dep’t of Labor (Oct. 16, 2013).

¹⁴ RESTAURANT OPPORTUNITY CENTER, *REALIZING THE DREAM: HOW THE MINIMUM WAGE IMPACTS RACIAL EQUITY IN THE RESTAURANT INDUSTRY AND IN AMERICA 7* (June 19, 2013).

¹⁵ Patrick McGeehan, *Minimum Wage for New York City’s Tipped Workers Will Increase to \$7.50*, NYT, February 24, 2015.

¹⁶ US Dep’t of Labor, *Minimum Wage for Tipped Employees* (Jan. 1 2015).

¹⁷ The White House, “The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage” (March 2014).

¹⁸ 29 C.F.R. § 531.52