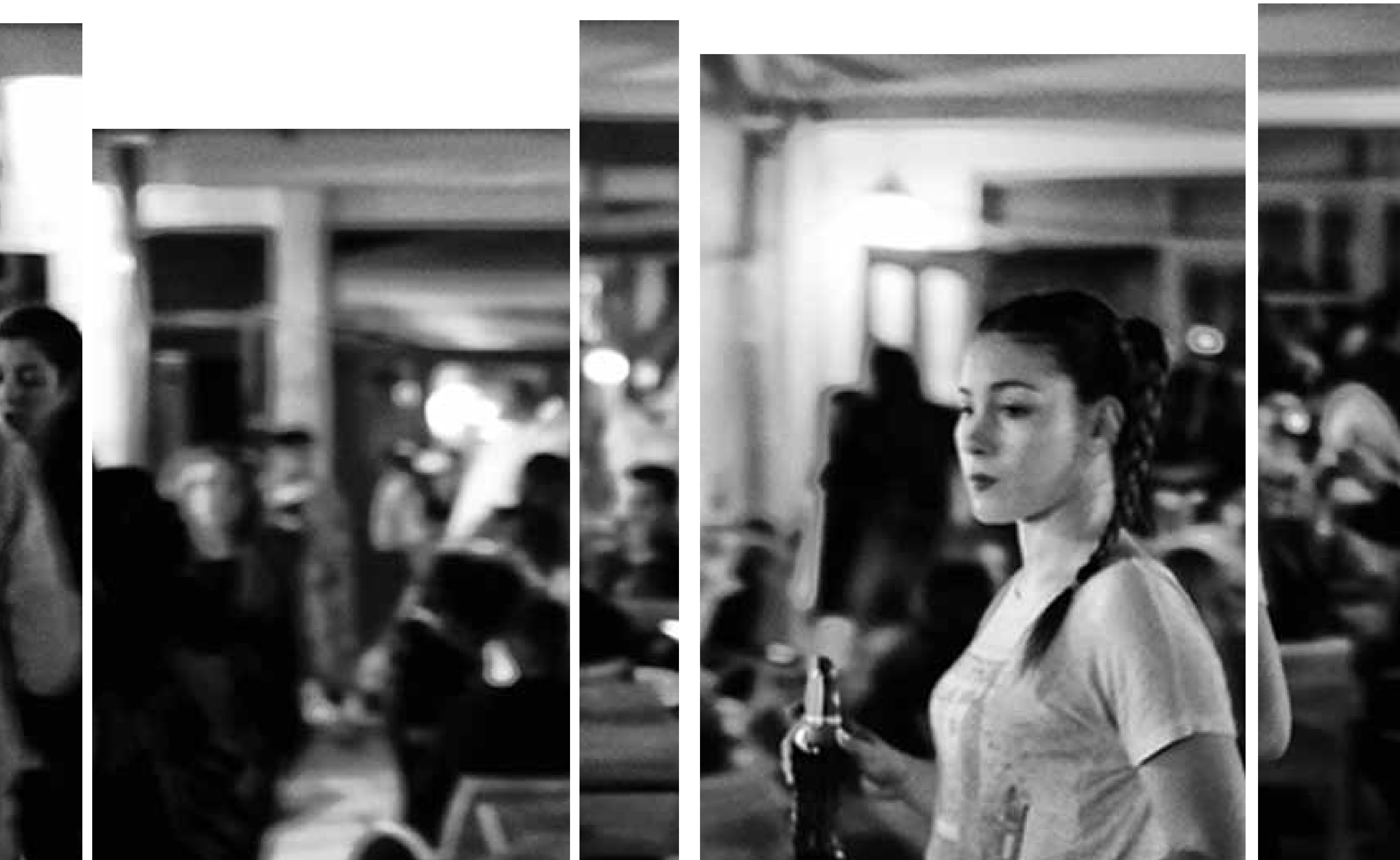


THE CASE FOR PHASING OUT MAINE'S SUBMINIMUM WAGE FOR TIPPED WORKERS

OCTOBER 2016

ROC UNITED

NELP NATIONAL EMPLOYMENT LAW PROJECT

THE CASE FOR PHASING OUT MAINE'S SUBMINIMUM WAGE FOR TIPPED WORKERS

As the movement for higher wages builds momentum from coast to coast, Maine residents are calling for the state to join the almost twenty states and more than forty cities and counties that have recently raised their minimum wage.[1] Residents will vote on a ballot initiative in the November 2016 election that, if successful, would gradually raise the state's minimum wage from its current level of $7.50 to $12 per hour by 2020. A $12 minimum wage in Maine by 2020 would raise wages for 181,000 residents.[2]

The ballot proposal would also gradually eliminate the subminimum wage for tipped workers, currently set at 50 percent of the full minimum wage, or $3.75 per hour.[3] Under current law, employers can pay tipped workers the lower tipped wage as long as gratuities cover the difference between the regular minimum wage and the subminimum tipped wage.[4] Tipped workers include waiters and waitresses, bartenders, food delivery workers, and many others at the heart of important Maine industries like tourism and hospitality. By eliminating the subminimum tipped wage, the ballot initiative would directly address the economic insecurity and high rates of sexual harassment that uniquely affect the nearly 24,000 tipped workers in Maine.[5]

This report analyzes the impact of maintaining a lower minimum wage for tipped workers and draws from the experience of "One Fair Wage" states and cities that have abolished the subminimum tipped wage. It finds that:

- The outmoded subminimum tipped wage promotes poverty wages and unstable incomes for a tipped workforce that is 79 percent female in Maine.[6] Contrary to industry claims that most tipped servers earn high incomes, the Bureau of Labor Statistics (BLS) reported in its 2015 Occupational Employment and Wage Estimates that **the median wage for tipped waiters and waitresses in Maine was just $9.06 per hour, including tips**.[7] This median wage was just a little higher than Maine's minimum wage during the period captured in the BLS data (the minimum wage in Maine has been set at $7.50 per hour since 2009).[8]

- While a small number of tipped workers are employed at high-end restaurants where they earn a significant amount in tips that translate into higher incomes, **high-earning servers are a small minority and not representative of tipped workers in Maine**.[9]

- Eight percent of all workers in Maine live in poverty, but Maine's tipped workers experience poverty at over twice that rate.[10] Like tipped workers across the country entitled only to a subminimum tipped wage, they work for **widely fluctuating incomes**[11] which leave them and their families economically vulnerable.

- People of color feel the impact of the tipped subminimum wage even more sharply—**a quarter of tipped workers of color in Maine live in poverty**, compared to 18 percent of white tipped workers.[12]

- With a base wage of $3.75 per hour, Maine's tipped workers depend almost entirely on tips for their income. This forces servers to tolerate inappropriate behavior from customers in order to make a living and also makes them vulnerable to objectification and harassment from co-workers and management. **In fact, women restaurant workers in states with a subminimum tipped wage of $2.13 per hour are twice as likely to experience sexual harassment as women in states that do not have a subminimum tipped wage**.[13]

- The nation's top wage enforcement experts at the U.S. Department of Labor report that the complex subminimum tipped wage system—whereby employers are required to monitor employee wages and tips so that they can make up the difference between an employee's earnings and the full minimum wage if tips fall short—is so complicated that it is **difficult to enforce and results in high rates of noncompliance by employers**.[14]

- **Recognition of the harms and pitfalls of a subminimum tipped wage has sparked a growing movement to abolish it**. Two federal bills to raise the minimum wage would gradually eliminate the subminimum tipped wage.[15] Leaders who support eliminating the subminimum tipped wage include President Barack Obama,[16] Secretary of State Hillary Clinton,[17] Senator Bernie Sanders,[18] and over two hundred members of Congress, including Maine Congresswoman Chellie Pingree.[19]

- Contrary to opponents' predictions, **raising the subminimum wage while prohibiting a lower tipped subminimum wage has not led restaurants to abolish tipping and has not led diners to reduce tipping levels**. While a small number of high-end restaurants are experimenting with eliminating tipping, overall tipping rates are the same, if not higher, in the seven One Fair Wage states.[20] In fact, tipping rates in San Francisco[21] and Alaska,[22] are among the highest in the country, despite the fact that these jurisdictions do not have a subminimum tipped wage.

- **The restaurant industry is strong in the seven One Fair Wage states, demonstrating that it is economically feasible to phase out the subminimum tipped wage without harming restaurant jobs or sales**.[23] The National Restaurant Association's (NRA) data show relatively high rates of restaurant industry employment and sales growth in **states that do not permit a subminimum tipped wage compared with states that permit it**.[24]

- **Restaurant employment in the seven One Fair Wage states is projected to grow in the next ten years by 10.7 percent, while Maine's restaurant employment rate is projected to grow 7.6 percent during that same period.**[25] **Restaurant sales during the next ten years are expected to grow by an average of 6.1 percent for the seven One Fair Wage states, a rate that exceeds both the national average sales growth rate of 5 percent and Maine's projected sales growth rate of 3.7 percent for the same period.**[26] At the local level, cities like San Francisco and Seattle, which are implementing high minimum wages and which prohibit a subminimum tipped wage, are seeing their restaurant industries thrive.[27]

- A $12 minimum wage and the gradual elimination of the subminimum tipped wage in Maine can increase consumer demand without significant inflationary effects. **Economists at the University of California, Berkeley, estimate that increasing Maine's minimum wage to $12 by 2020 would increase overall prices by less than 1 percent.**[28] At the same time, extensive economic research shows that workers who see their incomes increase as a result of a higher minimum wage are likely to spend their additional earnings in their communities.[29] A higher minimum wage, in combination with the elimination of the subminimum tipped wage, could therefore boost sales for Maine restaurants and encourage economic growth across industries.

1 BACKGROUND: THE SUBMINIMUM TIPPED WAGE HAS NOT ALWAYS EXISTED—AND IT IS NOT UNIVERSAL TODAY

Tipping is a nineteenth-century practice imported from Europe and originally opposed in the United States as un-American and undemocratic.[30] However, with encouragement from business interests, tipping eventually proliferated in the aftermath of the Civil War, when the service industry, best exemplified by the Pullman Train Company, adopted a strategy of hiring former slaves who were not paid a wage but instead depended on customers to pay them in tips.[31]

Until 1966, there was no federal subminimum wage for tipped workers.[32] But with the 1966 expansion of the federal Fair Labor Standards Act (FLSA) to cover hotel, motel, restaurant, and other leisure and hospitality employees who had previously been excluded from the FLSA, the law was amended to allow employers to pay tipped workers a subminimum wage set at 50 percent of the full minimum wage.[33] In 1980, Congress raised the subminimum tipped wage to 60 percent of the full minimum wage, but returned it to 50 percent in 1991.[34]

In 1996, bowing to pressure from the restaurant industry, the Republican-controlled Congress froze the subminimum tipped wage at $2.13, decoupling it from the full minimum wage for the first time since its adoption, and setting up two decades of a frozen subminimum wage for tipped workers.[35]

Notwithstanding federal law, seven states—California, Nevada, Oregon, Washington, Minnesota, Montana, and Alaska—do not permit a subminimum wage for tipped workers.[36] Tipped workers in those One Fair Wage states receive the full minimum wage, and their tips function as a gratuity should—as additional income over and above their wages.

2 THE TYPICAL TIPPED WORKER IN MAINE STRUGGLES ON BARELY MORE THAN THE MINIMUM WAGE AND FACES SIGNIFICANT ECONOMIC INSECURITY

The typical tipped worker in Maine earns just a little more than the state's minimum wage. As discussed in more detail below, while a small number of tipped workers are employed at high-end restaurants where they earn significant amounts in tips that result in higher incomes, they are a small minority and not representative of tipped workers in the state. As a whole, tipped workers receive meager wages and experience poor working conditions. In fact, data show that seven of the twelve lowest-paid occupations in Maine are tipped occupations (see Table 1).

Tipped restaurant workers account for 89 percent of the tipped workforce in Maine,[37] and servers and bartenders, alone, account for 60 percent of all Maine tipped workers.[39] According to 2015 BLS data, covering the period from November 2012 through May 2015 (adjusted to 2015 using the Employment Cost Index), the

T1 MEDIAN WAGES FOR THE 12 LOWEST-PAID OCCUPATIONS IN MAINE
2015 BLS Occupational Employment Statistics[39]
TIPPED OCCUPATIONS IN BOLD

OCCUPATION	MEDIAN HOURLY WAGE
Locker Room, Coatroom, and Dressing Room Attendants	$8.60
Baggage Porters and Bellhops	**$8.81**
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	**$8.82**
Ushers, Lobby Attendants, and Ticket Takers	$8.86
Manicurists and Pedicurists	**$8.91**
Combined Food Preparation and Serving Workers, Including Fast Food	$8.91
Amusement and Recreation Attendants	$8.93
Bartenders	**$8.94**
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	**$8.96**
Personal Care and Service Workers, All Other	**$9.00**
Waiters and Waitresses	**$9.06**
Motor Vehicle Operators, All Other	$9.07

median wage for tipped restaurant servers in Maine—base wage plus tips—was just $9.06 per hour.[40] Maine's subminimum tipped wage during that period was frozen at a meager $3.75, and the full minimum wage was set at $7.50 per hour.[41] Thus, the typical Maine server received enough tips to bring their hourly earnings up to just a little more than the full minimum wage—a far cry from the high income that the restaurant industry claims is representative of tipped servers in the state.[42] Even Maine restaurant servers earning at the seventy-fifth percentile in terms of hourly wages earn only $11.59 per hour.[43] Those earning at the ninetieth percentile earn $17.19 per hour.[44]

Cost of living analysis shows that all workers throughout Maine, whether tipped or non-tipped, need to earn at least $12 to afford the basics (see Appendix 1). According to data from the Economic Policy Institute, in 2014, a single worker with no children working full-time in Rural Maine needed to earn at least $14.71 per hour to make ends meet; a full-time single worker with one child required at least $22.75 per hour to do the same.[45] Based on these cost of living estimates, even servers earning at the ninetieth percentile in Maine are barely making ends meet. Bartenders fare worse: their median hourly wage (including wages and tips) is just $8.94 per hour.[46] In other words, the typical waiter, waitress, and bartender in Maine is barely getting by, even after taking tips into account.

The inherently uneven and often unpredictable nature of tipped work is no doubt a factor driving Maine tipped workers' low wages. While most of us expect to be paid the same for every day or hour we work, this is often not the case for tipped workers. Restaurant servers may make a substantial amount of money on Friday or Saturday night but much less on other days. As one tipped worker explained, "nobody likes to work Sunday morning or Monday—but somebody has to do it. When that's my

F1 POVERTY RATES IN MAINE
Bartenders and servers experience poverty at over twice the rate of the overall workforce in Maine[51]

time, I know I'm not going to make any money. Working Friday night is like working five Sunday mornings."[47] Bad weather, a sluggish economy, the changing of the seasons, and a host of other factors can also cause sudden drops in tipped income and lead to economic insecurity.

It is no surprise then that in Maine, tipped workers face poverty rates that are double those of the overall workforce, and the poverty rate for servers and bartenders is even higher.[48] Servers and bartenders in Maine experience a poverty rate of 19 percent while workers, generally, experience a poverty rate of 8 percent (see Figure 1). Tipped workers in Maine also rely on public assistance to make ends meet at high rates. Seventeen percent of tipped workers in Maine use food stamps, and 18 percent have insurance through Medicaid.[49] In contrast, amongst Maine's overall workforce, 11 percent rely on food stamps and 9.2 percent rely on Medicaid.[50] Public assistance is essential for basic economic security, but is not intended to serve as a wage subsidy for low-wage employers.

3 MAINE'S TIPPED WORKERS ARE OVERWHELMINGLY ADULTS, DISPROPORTIONATELY WOMEN, LIKELY TO HAVE AT LEAST SOME HIGHER EDUCATION, AND MORE LIKELY TO LIVE IN POVERTY THAN OTHER WORKERS

Demographically, tipped workers in Maine are older and more educated than commonly perceived, and they often support families on their tips:

- In Maine, 59 percent of workers in predominantly tipped occupations are adults age 25 or older.[52]
- Seventy-nine percent of the tipped workforce in Maine is female.[53]
- Nearly 46 percent of workers in predominantly tipped occupations in Maine have had some amount of higher education.[54]
- As noted above, servers and bartenders in Maine experience a poverty rate of 19 percent, compared with a rate of 8 percent for Maine workers, generally (see Figure 1). In addition, 17 percent of tipped workers in Maine rely on food stamps, and 18 percent have insurance through Medicaid.[55]

4 ELIMINATING THE TIPPED MINIMUM WAGE COULD SIGNIFICANTLY REDUCE SEXUAL HARASSMENT FOR MAINE'S TIPPED RESTAURANT WORKERS

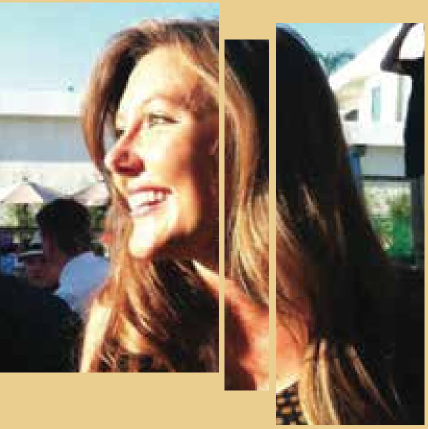
Because tipped workers largely rely on customers for their income, they must often tolerate inappropriate behavior at work from customers, co-workers, and management. In fact, while only 7 percent of women in the U.S. work in the restaurant industry, more than a third (37 percent) of all sexual harassment claims to the Equal Employment Opportunity Commission (EEOC) come from the restaurant industry.[56]

A 2014 survey of 688 restaurant workers by ROC United and Forward Together showed that women working in customarily tipped occupations in states that have eliminated the two-tiered wage system were less likely to experience sexual harassment than women in states where they must depend on customers' tips for the bulk of their income.[57] Women restaurant workers in states with a tipped subminimum wage of $2.13—just slightly lower than Maine's tipped subminimum wage of $3.75—are twice as likely to experience sexual harassment as women in states that do not have a tipped subminimum wage.[58] Women working in tipped restaurant occupations reported that the cultural expectations of their work in terms of appearance and behavior were often more heavily sexualized when they depended on tips to meet their base wage.[59] In states that allow subminimum wages for tipped workers, women reported high rates of tolerating inappropriate comments and sexual behaviors while at work to ensure a good tip and to simply keep their job.[60] Depending entirely or almost entirely on tips for income ultimately pressures tipped workers to endure inappropriate behavior.[61]

Moreover, sexual harassment fueled by the subminimum tipped wage affects workers of all genders. Men and transgender workers report that sexual harassment is widespread in their restaurants.[62] Forty-six percent of men reported that sexual harassment was an uncomfortable aspect of work life, and 60 percent of transgender workers reported experiencing "scary" or "unwanted" sexual behavior.[63] Transgender survey respondents were two-and-a-half times more likely to report harassing comments about their sexual orientation or gender identity from customers than their cisgender coworkers.[64]

A negative experience with sexual harassment in a restaurant workplace has lingering effects that appear to amplify over time. The 2014 study also surveyed a subset of 233 women who had previously worked in the restaurant industry, and it found that over one third of those who had been tipped workers reported quitting their jobs as a result of unwanted sexual advances.[65] Overall, they were 1.6 times more likely to tolerate harassing behaviors in the workplace than women currently employed as tipped workers, indicating that women who encounter sexual harassment in the restaurant industry are more likely to tolerate sexual harassment in other environments.[66] In other words, the subminimum wage emboldens and normalizes inappropriate conduct, shaping perceptions of sexual harassment as acceptable workplace behavior that tipped workers can carry to future workplaces.

Eliminating the tipped subminimum wage in Maine would likely reduce the incidence of sexual harassment for tipped workers and potentially alter workplace norms in a positive manner for all tipped workers in Maine and across the country.



WHEN ALI MOVED TO MAINE FROM CALIFORNIA—where servers are paid the full minimum wage in addition to receiving tips—she wasn't prepared for the seasonal impact that comes with living on a subminimum tipped wage as a server. Ali told us that her pay "was cut in half in the winter, but my rent didn't change and the cost of heating goes up.... We don't get snow days, so sometimes it feels like we put our lives on the line to get to work and then [only] make $20–$25, and then get sent home because it's too slow."

According to Ali, seasonal variations are just one component of the precarious financial situation for servers in Maine. Because of the subminimum tipped wage, Ali's "entire financial stability comes from people's gratuity—which can be 0 percent. There are times when people don't tip, which means I don't make any money. There are times [when] I sit for an hour and a half and wait a table so I can make money." Since Ali makes only $3.75 an hour from her employer, the wages from her employer go almost entirely to taxes which makes her dependent on the whims of customers to make ends meet.

To make matters worse, the subminimum wage for tipped workers facilitates unwanted sexual behavior from customers at Ali's workplace. Ali told us, "I have experienced sexual harassment, I have been given [phone] numbers instead of tips, I have been groped. I have been called 'the help.' I have been told the only reason I make tips is because I 'am slutty.'" Ali believes that eliminating the subminimum wage for tipped workers would help protect her from harassment. She explained that "this referendum would make me stand up for myself and for what I believe is right. I wouldn't have to deal with sexual harassment on a daily basis to live and survive."

5 THE COMPLEX SUBMINIMUM TIPPED WAGE SYSTEM IS DIFFICULT TO ENFORCE AND RESULTS IN WIDESPREAD NONCOMPLIANCE

Some of the nation's top wage enforcement and policy experts, including the U.S. Department of Labor, report that the complex subminimum tipped wage system—where employers are supposed to monitor employee wage and tip levels and make up the difference if tips fall short of bringing workers up to the full minimum wage—is so complicated that it is difficult to enforce, resulting in high levels of noncompliance by restaurant employers.

Employers in Maine are required to make up the difference if a worker's base wage of $3.75 per hour plus tips does not add up to the full minimum wage.[67] But this complex system is both difficult to comply with and largely unenforceable for a number of reasons:

1. It requires extensive tracking and accounting of tip flows, which is burdensome and difficult for employers.[68]

2 Employers are allowed to average tips over the course of the entire work-week and required to "top up" only if an employee's average hourly earnings are less than the full minimum wage.[69]

3 Tips are allowed to be pooled among various types of restaurant employees, allowing a portion of the tips that a server receives to be reallocated to other employees.[70]

4 Tipped workers who have experienced tip-stealing or other forms of wage theft are often reluctant to demand what they are owed out of fear of reprisal. Tipped workers rely on their supervisors to schedule them for shifts, and their earnings in tips often depend on which shifts they work.[71]

A 2014 report by the White House National Economic Council and the U.S. Department of Labor confirms these challenges, stating that "[t]he rules for tipped workers are complicated and can be confusing for employers and employees alike."[72] The report noted that "[o]ne of the most prevalent violations is the failure to keep track of employee tips and therefore the failure to 'top up' employees if their tips fall short of the full minimum wage."[73] It found that, when surveyed, "more than 1 in 10 workers in predominantly tipped occupations report hourly wages below the full Federal minimum wage, including tips" while "just 4 percent of all workers report hourly wages below the minimum wage."[74] An in-depth story by *The New York Times* on the nail salon industry in New York similarly found that even though nail salon workers are considered tipped workers under state law, "interviews with scores of workers revealed rates of pay so low that the so-called tip calculation is virtually meaningless" and "[n]one reported receiving supplemental pay from their bosses, as is legally required when their day's tips fall short of the minimum wage."[75]

Compliance and enforcement challenges aside, under a subminimum tipped wage system, customers are directly responsible for paying the majority of workers' wages. For many servers in Maine who are paid just $3.75 an hour, zero-dollar paychecks are the norm since their employer-provided wages go almost entirely towards taxes. Thus, rather than a gratuity for good service, the existence of a subminimum tipped wage renders tips a customer-funded wage replacement that lowers labor costs for employers in a few select industries.

6 A GROWING MOVEMENT SEEKS TO ABOLISH THE OUTMODED SUBMINIMUM TIPPED WAGE, AND NATIONAL LEADERS, INCLUDING PRESIDENT OBAMA, SECRETARY CLINTON, SENATOR SANDERS, AND MORE THAN TWO HUNDRED MEMBERS OF CONGRESS, SUPPORT IT

A growing list of national leaders are backing proposals to gradually phase out the subminimum tipped wage. This list includes:

- President Barack Obama[76]
- Vice President Joseph Biden[77]
- Secretary of State Hillary Clinton[78]
- Senator Bernie Sanders[79]
- U.S. Secretary of Labor Tom Perez[80]
- 175 members of the House, including Maine Congresswoman Chellie Pingree[81]
- 33 U.S. Senators[82]

All of these leaders have endorsed or co-sponsored the federal Raise the Wage Act (H.R. 2150; S. 1150), which would gradually phase out the subminimum tipped wage and raise the federal minimum wage to $12 by 2020. A number have also endorsed the Pay Workers a Living Wage Act (H.R. 3164; S. 1832), which would gradually phase out the subminimum tipped wage and raise the federal minimum to $15 by 2020. Their support highlights the growing national consensus among progressive leaders that it is time to get rid of the unfair and outdated subminimum wage for tipped workers.

MICHAEL LANDGARTEN
Robert's Maine Grill, Bob's Clam Hut, and Lil's Café

MICHAEL LANDGARTEN HAS OWNED AND OPERATED RESTAURANTS for close to 30 years. After working as a computer programmer and a musician, Michael began a career in the restaurant industry in 1986. Since then, he has been animated by his loyal customers and a passion for quality food. Michael supports eliminating the subminimum tipped wage because, in his experience, "underpaid workers lead to unhappy staff who are hard to motivate, as well as to high turnover." Moreover, Michael feels strongly that "if all restaurant workers are shown the respect they deserve with a wage they can live on, the industry will improve, as will the guest experience."

Unfortunately, many restaurant workers in Maine don't make living wages and tipped restaurant workers struggle with an additional level of uncertainty, not knowing how much they will take home week-to-week or even day-to-day. According to Michael, "the subminimum [tipped] wage creates insecurity and instability in the service workforce." Since "those in service are always feeling in danger of not making enough, they are subject to 1) the whims of their guests (in the worst cases sometimes including harassment); 2) the ups and downs of business; and 3) management decisions (for example, what section they are assigned)."

Michael believes that restaurant owners can benefit from eliminating the subminimum wage for tipped workers. Instead of subminimum tipped wages being "a source of great divisiveness between front and back of house," raising the wage for all restaurant workers to One Fair Wage offers the potential to "unify the whole staff behind a common purpose—thrilling guests with great food and service." For forward-thinking restaurateurs like Michael, raising the minimum wage for tipped workers means that "the quality of the work will improve dramatically" and result in a "better compensated and secure workforce."

7 THE RESTAURANT INDUSTRY IS HEALTHY IN STATES THAT HAVE NO SUBMINIMUM TIPPED WAGE

While lobbyists for the restaurant industry argue that eliminating the subminimum tipped wage would hurt the restaurant industry and harm restaurant workers, the facts belie those claims. 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 regular and subminimum tipped wage raises restaurant industry wages without "large or reliable effects on full-service and limited-service restaurant employment."[83] The restaurant industry's own analysis shows that the industry is healthy in the states that do not have a subminimum tipped wage, and that sales in those states are projected to grow at an even faster rate than in many of the states that have retained a subminimum tipped wage.

The NRA estimates that 2015 marked the sixteenth consecutive year in which the restaurant industry's job growth outpaced growth in the overall U.S. economy,[84] and that in 2016, restaurant job growth will outpace the overall economy again, adding more than 300,000 jobs.[85] In fact, jobs in the "eating-and-drinking place sector" increased by 38 percent since 1999, while jobs in the overall economy increased by only 10 percent during that period.[86] Restaurant sales are expected to reach $783 billion this year, according to the latest NRA Industry Forecast.[87]

Many states experiencing strong restaurant job growth do not allow a subminimum tipped wage and require employers to pay tipped workers some of the country's highest minimum wage rates. Restaurant employment in California—where the minimum wage is now $10 per hour and will reach $15 by 2023,[88] and which has no subminimum tipped wage—is projected to grow by 10.1 percent during the 2016–2026 period.[89] In Oregon, which similarly has no subminimum tipped wage, the minimum wage is currently $9.75 in most parts of the state[90] and will increase to between $12.50 and $14.75 per hour over the next six years.[91] Restaurant employment in Oregon is projected to grow by 13.2 percent between 2016 and 2026.[92] And in Washington State, where the minimum wage is $9.47[93] and voters will decide in November whether to increase the minimum wage to $13.50 through a ballot initiative,[94] restaurant employment growth during the same period is expected to grow by 12.6 percent.[95]

In fact, restaurant employment in the seven states without a subminimum tipped wage is expected to grow an average rate of 10.7 percent in the next ten years (see Table 2). In contrast, restaurant employment in Maine is projected to grow 7.6 percent during that period (see Table 2). When it comes to restaurant sales, projected 2016 sales for the seven One Fair Wage states average 6.1 percent (see Table 2), a rate which exceeds both the projected national average of 5 percent[96] and Maine's projected sales growth rate of 3.7 percent.[97] Table 2 summarizes the NRA's projected employment and sales growth for the seven One Fair Wage states as well as Maine.

Historical data from 2001 to 2015 for the seven One Fair Wage states and Maine also show that raising wages while prohibiting a subminimum wage for tipped workers has had no adverse effect on those states' vibrant restaurant scenes. Maine, on

T2 Comparing Maine's projected restaurant employment and sales growth with projected employment and sales growth in states without a subminimum tipped wage

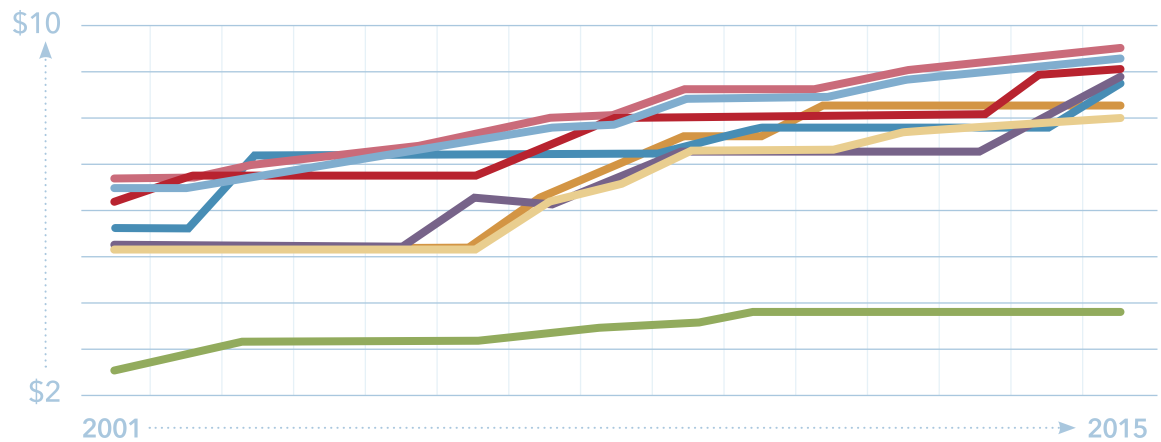
	CURRENT MINIMUM WAGE[98]	SUBMINIMUM TIPPED WAGE?[99]	NRA PROJECTED JOB GROWTH, 2016–2026[100]	NRA PROJECTED SALES GROWTH, 2016[101]
Seven States with No Subminimum Tipped Wage	Varying *but all higher than Maine's current $7.50*	No	10.7% *weighted average*	6.1% *weighted average*
Alaska	$9.75	No	6.9%	5.3%
Washington	$9.47	No	12.6%	7.0%
Oregon	$9.75 *most areas* $9.50 *certain nonurban counties*	No	13.2%	6.9%
California	$10.00	No	10.1%	6.6%
Montana	$8.05	No	11.1%	5.4%
Minnesota	$9.50	No	8.3%	3.9%
Nevada	$8.25	No	12.9%	7.3%
MAINE	**$7.50**	**Yes | $3.75**	**7.6%**	**3.7%**

the other hand, which maintained both a low minimum wage and a low subminimum tipped wage during this period (see Figure 2), lagged behind all seven One Fair Wage states when it comes to restaurant employment growth (see Figure 3). It also lagged behind four of the One Fair Wage states in the growth of restaurant establishments (see Figure 4).

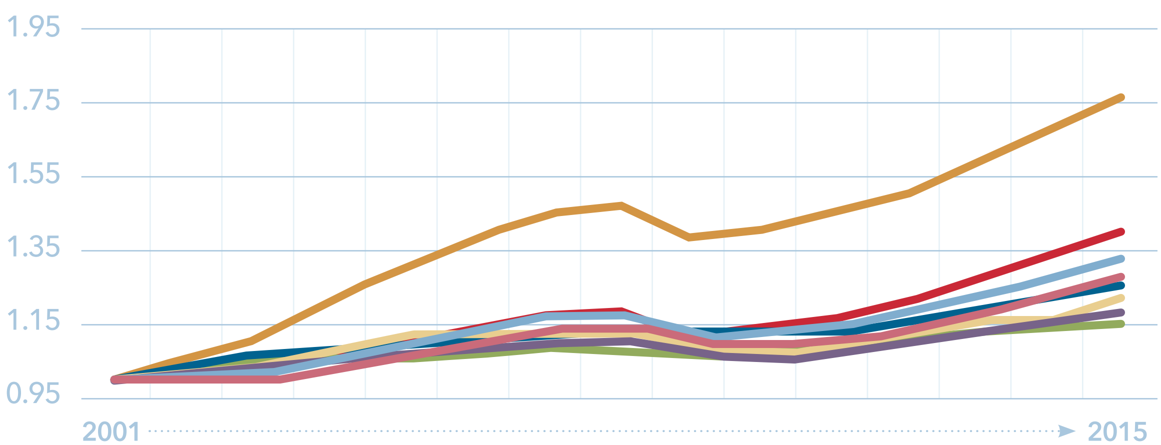
Restaurant industry spokespersons might argue that many of the states that have eliminated the subminimum tipped wage are located on the West Coast or that some of those states are significantly larger than or different from Maine. Together, however, the seven states show that the restaurant industry has been able to grow in a variety of jurisdictions that have adopted relatively high minimum wage rates and treat tipped workers like all other workers entitled to the full minimum wage.

The size of the restaurant industry varies significantly among the seven states that have eliminated the subminimum wage for tipped workers, and one cannot claim that the seven One Fair Wage states all have significantly larger restaurant industries or restaurant sales figures when compared with Maine. According to data from the NRA, Alaska had 1,383 eating and drinking locations in 2015, and its restaurant industry is projected to reach $1.6 billion in sales in 2016 (see Table 3). California, at the other end of the spectrum, had 69,908 eating and drinking places in 2015, and its restaurant industry is expected to reach $79.1 billion in sales in 2016 (see Table 3). Notably, both Alaska, at the lowest end of the employment spectrum, and California, at the highest end, have higher projected restaurant sales per restaurant employee than Maine (see Table 3). Restaurant and foodservice jobs account for between 9 percent and 19 percent of all employment in the seven One Fair Wage states, and the rate in Maine falls within that range (see Table 3).

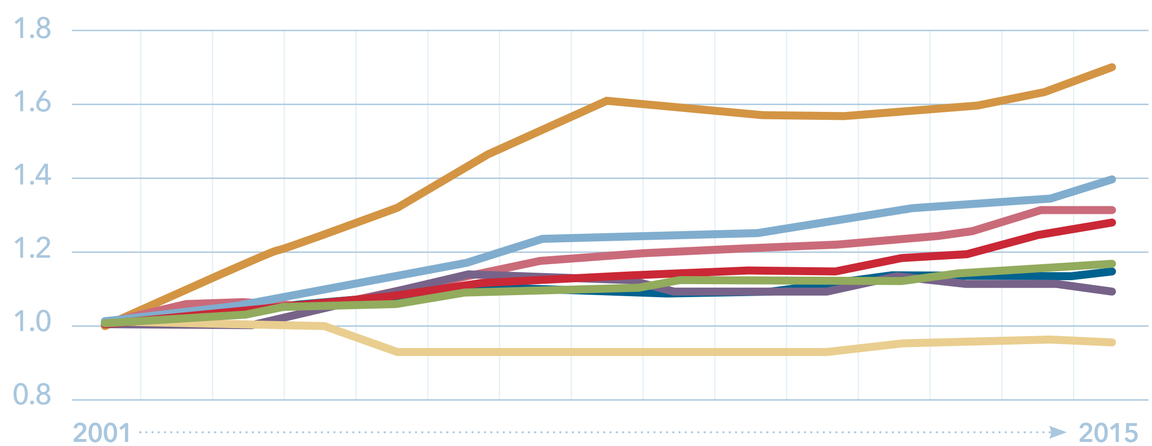
F2 Comparing the subminimum tipped wage in Maine with the minimum wage in the seven One Fair Wage states (2001–2015)[102]



F3 Comparing restaurant employment in Maine with restaurant employment in the seven One Fair Wage states (2001–2015)[103]



F4 Comparing the growth of restaurant establishments in Maine with the same growth in the seven One Fair Wage states (2001–2015)[104]



ALASKA | CALIFORNIA | MAINE | MINNESOTA | MONTANA | NEVADA | OREGON | WASHINGTON

T3 Comparing the size of the restaurant industry in the seven One Fair Wage states with Maine's restaurant industry

	NUMBER OF EATING AND DRINKING LOCATIONS (2015)[105]	PROJECTED SALES (2016)[106]	PROJECTED SALES PER RESTAURANT EMPLOYEE[107]	RESTAURANT AND FOOD SERVICE JOBS AS PERCENTAGE OF ALL PRIVATE EMPLOYMENT (2015)[108]
Alaska	1,383	$1.6 billion	$74,419	9%
California	69,908	$79.1 billion	$59,788	11%
Minnesota	9,709	$9.5 billion	$49,843	10%
Montana	2,639	$1.8 billion	$46,875	12%
Nevada	5,603	$6.9 billion	$58,974	19%
Oregon	9,626	$7.4 billion	$51,353	12%
Washington	15,037	$13.1 billion	$57,330	10%
MAINE	**3,112**	**$2.2 billion**	**$50,691**	**11%**

Ultimately, based on economic research like the 2015 Cornell study cited above, as well as historical and projected restaurant industry data concerning the strength of the restaurant industry in the seven One Fair Wage states and Maine, Maine's restaurant workers, businesses, and the state itself stand to benefit from raising the minimum wage to $12 per hour and eliminating the subminimum tipped wage. Moreover, in Maine's case, a $12 minimum wage and gradual elimination of the subminimum tipped wage will not only not cause widespread job losses or restaurant closings, these changes have the potential to increase consumer demand for the state's restaurants.

Introducing a One Fair Wage of $12 per hour for tipped workers would mean an eventual annual stimulus in additional earnings of up to $258 million, which is an average of a low estimate of $168 million and a high estimate of $347 million. The low estimate is based on the difference between the reported hourly earnings (base wage plus tips) for tipped workers currently earning under $12 per hour, and the new minimum wage of $12. The high estimate is based on the difference between the base wage ($3.75) for all tipped workers and the new minimum wage of $12 per hour, a stimulus that would benefit the local economy, including the restaurant industry.[109] The lower estimate includes a number of tipped workers who report earning less than the state minimum wage of $7.50 per hour, a number that would decrease after adoption of a One Fair Wage policy, since the current subminimum wage system results in, as noted above, high rates of noncompliance with wage and hour regulations.

Economists at the University of California, Berkeley, also estimate that increasing Maine's minimum wage to $12 by 2020 would increase overall prices by less than 1 percent (roughly 0.9 percent cumulatively over the next four years, or 0.22 percent each year).[110] That is far less than the Congressional Budget Office's projection for core inflation, which is expected to be approximately 2 percent per year in future years.[111] At the same time, extensive economic research shows that workers whose incomes increase as a result of a higher minimum wage tend to spend their additional earnings in their communities.[112] Restaurants in Maine are likely to see new or more frequent customers if voters approve the $12 minimum wage ballot initiative and experience the type of solid growth seen in the One Fair Wage states.[113]

> "Raising the wages of the lowest paid workers creates a wave of new consumers who previously weren't able to spend money at local businesses. Working long hours at multiple jobs doesn't leave much time for low-wage workers to get out into their community and spend time with loved ones. Families struggling to make ends meet can't afford the luxury of taking their children out for ice cream. Now that Seattle businesses are paying a living wage I look forward to seeing new customers in my shops and welcoming new fans of our products."
> –MOLLY MOON NEITZEL, *Owner, Molly Moon's Homemade Ice Cream with seven locations throughout Seattle and a member of the Main Street Alliance of Washington*

8 THE RESTAURANT INDUSTRY IS THRIVING IN CITIES LIKE SEATTLE AND SAN FRANCISCO THAT ARE RAISING THEIR MINIMUM WAGE AND HAVE NO SUBMINIMUM WAGE FOR TIPPED WORKERS

The restaurant industry is thriving in cities like Seattle and San Francisco that are phasing in a $15 minimum wage and do not permit employers to pay a subminimum tipped wage. These cities are therefore demonstrating at the local level that a robust minimum wage even higher than Maine's proposed $12 minimum, in combination with no subminimum tipped wage, can be manageable for the restaurant industry and does not hurt jobs.

> "I'm a server at a restaurant in Seattle where we are experiencing a restaurant boom. I've worked in the restaurant industry for more than seven years and believe that by increasing the minimum wage to $15, we can put more money in the hands of workers that they can then spend at restaurants. My customers leave 15 to 20 percent in tips on average, and I don't think that there's a correlation between my wages and how much I earn in tips."
> –NATE MIDGLEY, *Seattle server, 7 years in the restaurant industry*

SEATTLE

In April 2015, Seattle began implementation of its new wage floor, which will reach $15 by 2021 for all employers.[114] Last fall, in a front-page story titled "Apocalypse Not: $15 and the Cuts that Never Came," the *Puget Sound Business Journal* reported on "[t]he minimum wage meltdown that never happened," explaining that Seattle's restaurant industry has continued to expand and thrive as the $15 wage phases

F5 Total Seattle food services and beverage industry business licenses[115]

"I'm a businessperson from Seattle and was a part of the group that led the Fight for $15 there. In Seattle, the first city to pass the fifteen dollar minimum wage, most people from outside thought that was some sort of departure from rational economic policy. We already had the highest minimum wage in the country, and we have no tip penalty in our city. So, if people were right that higher wages kill jobs, then we should have no restaurants in Seattle. But that's the really odd thing, not only do we have some restaurants in Seattle, we have a lot of them. In fact, we have more restaurants per capita in Seattle than even New York. According to a Bloomberg analysis, Seattle has the second highest density of restaurants in the country—the only place that outperforms Seattle is San Francisco. So, they say that higher wages kills jobs in the economy and it's just not true."
—NICK HANAUER, *Seattle-based entrepreneur*

in.[116] More recent reports confirm that neither the city's economy nor the restaurant industry has suffered.[117] In fact, a few months after Seattle began phasing in its minimum wage, the region's unemployment rate hit an eight-year low of 3.6 percent, significantly lower than the state unemployment rate of 5.3 percent.[118] Moreover, since Seattle passed its trailblazing $15 minimum wage in 2014, the number of food services and beverage industry business licenses issued in the city has increased by 9 percent (see Figure 5).

SAN FRANCISCO

Like Seattle, San Francisco does not permit a subminimum tipped wage, its minimum wage is increasing to $15 by 2018,[119] and its restaurant industry is booming. According to the Golden Gate Restaurant Association, "the metrics show that San Francisco has still seen record restaurant growth,"[120] despite a rising minimum wage and other factors affecting the restaurant industry. San Francisco's experience with prior minimum wage increases offers further proof that wage floor increases do not lead to economic catastrophe. After a 2003 ordinance was adopted, which indexed the city's minimum wage to inflation, thereby raising the wage floor each year, University of California researchers analyzed the effects of this policy in a 2007 study. They gathered employment and hours data from fast-food and full-service restaurants in San Francisco, as well as from surrounding counties that were not covered by the higher

"I am currently working as a bar back in Seattle, and the restaurant industry seems strong to me. Higher wages haven't changed the way customers tip. The only thing the higher minimum wage did was give you something else to make small talk about with the regulars. People who used to tip still tip the same amount, in my experience. I think tipping is simply part of our culture and nobody here is going to stop tipping because their server makes a decent wage. No one sees better overall pay for low-wage workers as a bad thing."
—TOBIAS COUGHLIN-BOGUE, *bar back in Seattle, 10 years in the restaurant/hospitality industry*

indexed minimum wage. They found that the higher wage had not led San Francisco employers to reduce either their employment levels or employee hours worked.[121] A follow-up 2014 study examined the combined impact on San Francisco employers of the city's minimum wage ordinance and of other city compensation mandates that cumulatively raised employment costs 80 percent above the level of the federal minimum wage. The study again found no adverse effect on employment levels or hours, and it found that food service jobs—the sector most heavily affected—actually grew about 17 percent faster in San Francisco than in surrounding counties during that period.[122]

9 RESTAURANTS IN CITIES THAT ARE RAISING THE MINIMUM WAGE AND HAVE NO SUBMINIMUM TIPPED WAGE ARE NOT RUSHING TO ABOLISH TIPPING, AND TIPPING RATES HAVE NOT DROPPED SIGNIFICANTLY UNDER SUCH POLICIES

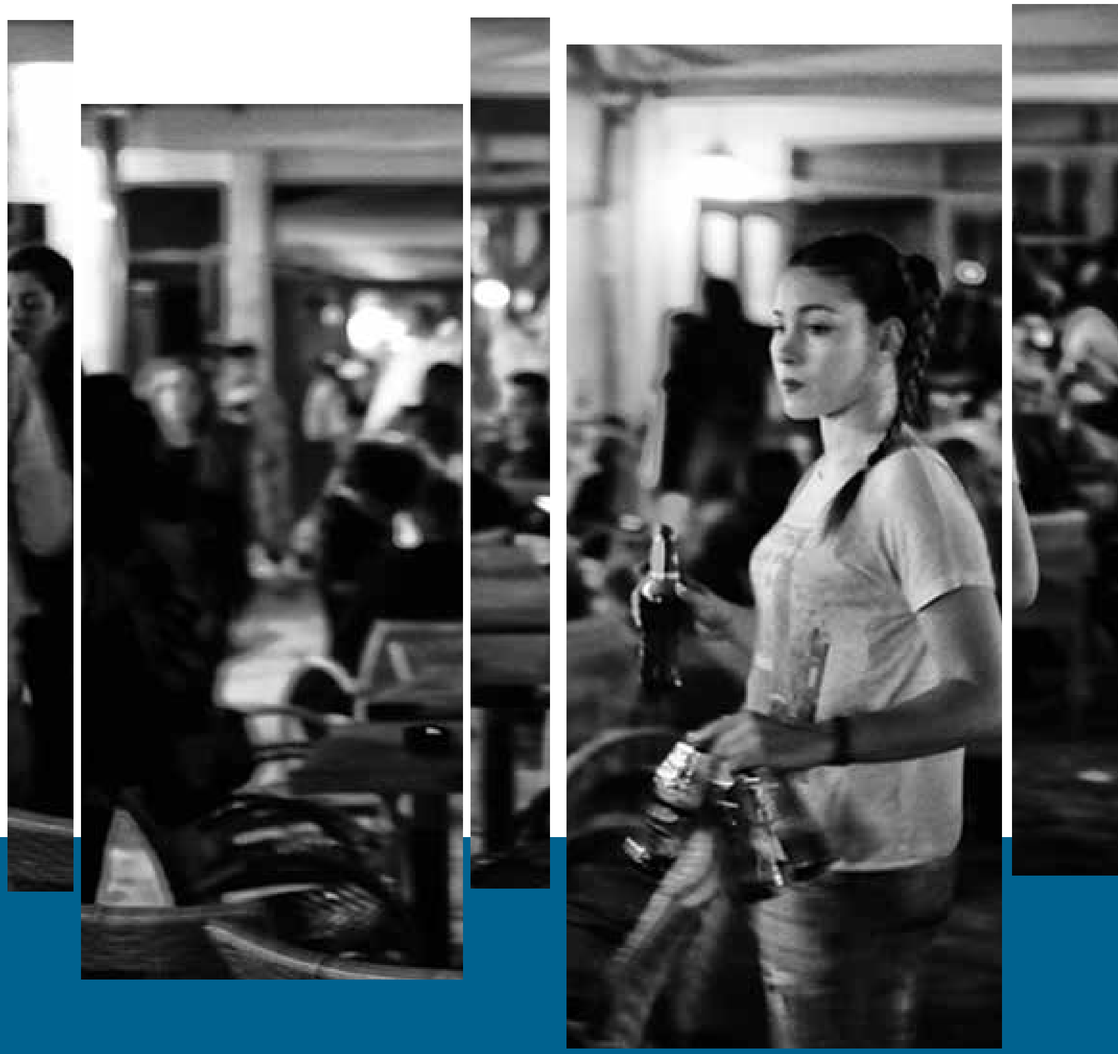
Contrary to predictions by some in the restaurant industry, raising the minimum wage and eliminating the subminimum tipped wage will not lead restaurants to abolish tipping or lead diners to reduce tipping levels. While a small number of mostly high-end restaurants today are experimenting with eliminating tipping,[123] the practice continues to be the norm in states like California, Washington, Oregon, and Minnesota where workers receive the full minimum wage before tips.

In fact, Alaska, a state without a subminimum wage for tipped workers, holds the record for the highest average tip rate among all fifty states.[124] In San Francisco, which, as noted above, is increasing its minimum wage to $15 by 2018 and where employers are also not permitted to pay tipped workers a subminimum base wage, the Golden Gate Restaurant Association, the voice of the restaurant industry in the city, recently noted that "[d]iners in San Francisco reported an average 19 [percent] tip rate."[125]

"Even though the minimum wage has been increasing in the past couple years, tipping and gratuities have not been negatively affected. But we still have a long way to go to catch up to a living wage. As a server, I noticed that customers continue to tip as customary. When we reach $15 an hour in CA, I expect customers to continue tipping at the same levels." —HUGO ALEMAN, *Los Angeles server, 23 years in the restaurant industry*

National data confirm that "raising the tipped wage significantly increases earnings of workers in [Full-Service Restaurants]."[126] And an analysis of wages for tipped workers found that "tipped workers in equal treatment states [with no subminimum tipped wage] earn 14.2 percent more than tipped workers in low tipped minimum states."[127] Data for waiters and bartenders show that earnings are about 20 percent higher in states where tipped workers must be paid the full minimum wage before tips than in states that follow the federal $2.13 tipped minimum wage. [128]

"My former company, Cover, monitors restaurant tipping practices closely as we operate a mobile payments platform for the industry. When cities or states have proposed eliminating the lower tipped wage and/or raising the minimum wage to $15, some have predicted that it would lead restaurants to abandon tipping or result in significantly lower tipping rates—potentially lowering net pay for wait staff, at least at high end restaurants. But the on-the-ground experiences in cities like San Francisco and Seattle have disproven those predictions. While a small number of restaurants are experimenting with getting rid of tipping in cities across the country, the number and frequency of restaurants dropping tipping is no higher in those cities that have the combination of a high minimum wage and no lower tipped wage. Also, customers in those cities have not significantly reduced their tips." —MARK EGERMAN, *Restaurant industry tipping expert; Co-Founder of the Cover restaurant mobile payments platform; and a senior fellow at the Center for American Progress*[129]



CONCLUSION

The experiences of the seven One Fair Wage states, as well as cities with no subminimum wage for tipped workers, show that both high minimum wage rates and the elimination of a subminimum tipped wage are economically manageable for restaurant employers and greatly improve the earnings and wellbeing of tipped workers. The bulk of Maine's tipped workers struggle to get by on low wages. Unless a minimum wage increase to $12 is combined with the gradual elimination of the unfair $3.75 subminimum tipped wage, tipped workers—such as waiters and waitresses, car wash workers, nail salon workers, and delivery workers—will continue to face low wages, fluctuating pay checks, and widespread legal violations that leave them economically vulnerable.

APPENDIX

COST OF LIVING ANALYSIS SHOWS THAT ALL WORKERS–TIPPED AND NON-TIPPED–NEED A $12 MINIMUM WAGE

METRO AREA	FAMILY SIZE	2014	2016	2018	2020
Bangor	Single Adult	$14.35	$14.93	$15.53	$16.16
	With one Child	$24.46	$25.45	$26.48	$27.55
Lewiston/Auburn	Single Adult	$13.18	$13.71	$14.27	$14.84
	With one Child	$23.11	$24.05	$25.02	$26.03
Portland	Single Adult	$15.31	$15.93	$16.57	$17.24
	With one Child	$26.08	$27.13	$28.23	$29.37
Rural Maine	Single Adult	$14.71	$15.30	$15.92	$16.56
	With one Child	$22.75	$23.67	$24.63	$25.62

NELP analysis of Economic Policy Institute's Family Budget Calculator, which lists family budgets in 2014 dollars. See www.epi.org/resources/budget/. NELP analysis assumes a 2 percent rate of inflation and no median wage growth.

NOTES

1 Raise the Minimum Wage, Campaigns, http://www.raisetheminimumwage.com/pages/campaigns/ (last viewed Oct. 14, 2016).

2 Maine Center for Economic Policy, Restoring the Value of Work (Aug. 2016) at 4, *available at* http://www.mecep.org/wp-content/uploads/2016/08/Minimum-wage-brief_final_08-17-16.pdf.

3 United States Department of Labor, Wage and Hour Division, Minimum Wages for Tipped Employees, https://www.dol.gov/whd/state/tipped.htm (last viewed Oct. 5, 2016).

4 Me. Rev. Stat. tit. 26, § 664.

5 *See* Bureau of Labor Statistics (BLS), May 2015 State Occupational Employment and Wage Estimates (OES), Maine, *available at* http://www.bls.gov/oes/current/oes_me.htm. The BLS May 2015 estimates are based on responses from six semiannual panels collected over a 3-year period: May 2015, November 2014, May 2014, November 2013, May 2013, and November 2012. Bureau of Labor Statistics, Occupational Employment Statistics, Technical Notes for May 2015 OES Estimates, http://www.bls.gov/oes/current/oes_tec.htm (last viewed Oct. 5, 2016). The OES gathers three years of data covering 1.2 million establishments, and close to 57 percent of all employment to reduce sample error and increase the reliability of wage and employment data in small geographical areas. All wage data are updated to the release year by adjusting the earlier two years to the final reference period using over-the-year wage changes in the latest Employment Cost Index of the National Compensation Survey, BLS, a quarterly index measuring change in labor costs. This report considers the following BLS occupations "customarily tipped occupations:" Massage Therapists; Bartenders; Counter Attendants, Cafeteria, Food Concession, and Coffee Shop workers; Waiters and Waitresses; Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop; Food servers, Non-restaurant; Dining Room and Cafeteria Attendants and Bartender Helpers; Barbers; Hairdressers, Hairstylists, and Cosmetologists; Miscellaneous Personal Appearance Workers (including Manicurists and Pedicurists; Shampooers; Makeup Artists, Theatrical and Performance; and Skincare Specialists); Baggage Porters, Bellhops, and Concierges; Taxi Drivers and Chauffeurs; and Parking Lot Attendants.

6 Analysis of American Community Survey, 2010–2014 merged-five year sample, by the Restaurant Opportunities Centers United (ROC-United), examining data for individuals employed in customarily tipped occupations (see note 5 for a list of "customarily tipped occupations"), or other occupations, as noted, living in Maine, based on Ruggles et al., Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database]. Minneapolis: Minnesota Population Center, 2010.

7 *See supra* note 5 (see Median hourly wage for "Waiters and Waitresses").

8 Maine.gov, State of Maine Department of Labor, Bureau of Labor Standards, History of Maine's Minimum Wage Rate, http://www.maine.gov/labor/labor_laws/minwagehistory.html (last viewed Oct. 5, 2016).

9 *See* discussion in Part 2, *infra*.

10 *See supra* note 6.

11 Sylvia A. Allegretto & David Cooper, Economic Policy Institute and University of California, Berkeley, Center on Wage and Employment Dynamics, Twenty-three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage (July 2015) at 19, *available* at http://www.epi.org/files/2014/EPI-CWED-BP379.pdf.

12 *See supra* note 6.

13 Restaurant Opportunities Centers United et al., The Glass Floor: Sexual Harassment in the Restaurant Industry (Oct. 2014) at 2, *available at* http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf.

14 National Economic Council et al., The Impact of Raising the Minimum Wage on Women And the Importance of Ensuring a Robust Tipped Minimum Wage (Mar. 2014) at 6–7, *available at* http://www.whitehouse.gov/sites/default/files/docs/20140325minimumwageandwomenreportfinal.pdf.

15 Raise the Wage Act, H.R.2150; S.1150, 114th Congress (2015–2016); Pay Workers a Living Wage Act, H.R. 3164; S.1832, 114th Congress (2015–2016).

16 The White House, Raise the Wage, https://www.whitehouse.gov/raise-the-wage (last viewed Oct. 6, 2016) (noting that the "Obama Administration has expressed support for the Raise the Wage Act").

17 Daniel Marans, "Hillary Clinton Takes a Stand Against 'Subminimum Wage' for People with Disabilities," Mar. 29, 2016, *The Huffington Post, available at* http://www.huffingtonpost.com/entry/hillary-clinton-subminimum-wage-people-with-disabilities_us_56faf630e4b083f5c605ef20 (noting that Hillary Clinton supports eliminating the tipped minimum wage).

18 Bernie 2016, Sanders Statement on New York and California Minimum Wage Increase, Apr. 4, 2016, *available at* https://berniesanders.com/sanders-statement-new-york-california-minimum-wage-increase/.

19 *See supra* note 15 (as of Oct. 6, 2016).

20 *See* Roberto A. Ferdman, "Which US states tip the most (and least), as shown by millions of Square transactions," March 21, 2014, *Quartz*, *available at* http://qz.com/189458/the-united-states-of-tipping/(compare One Fair Wage states to other states in table assessing "Which US states are nicest to their servers?").

21 According to the Golden Gate Restaurant Association, "[d]iners in San Francisco reported an average 19% tip rate." Samantha Higgins, Golden Gate Restaurant Association, The State of the Industry: An Update from GGRA's Executive Director (Apr. 2016), *available at* http://ggra.org/the-state-of-the-industry-an-update-from-ggras-executive-director/. A 19 percent tip rate exceeds even the highest state tip rate of 17 percent in Alaska. *See supra* note 20.

22 *See supra* note 20.

23 *See* discussion in Parts 7 and 8, *infra*.

24 *Id.*

25 *Id.*

26 *Id.*

27 *See* discussion in Part 8, *infra*.

28 According to an analysis by economists at the University of California, Berkeley, Institute for Research on Labor and Employment.

29 *See* Raise the Minimum Wage, Minimum Wage as Economic Stimulus, http://raisetheminimumwage.org/pages/stimulus (last viewed Oct. 5, 2016); David Cooper & Douglas Hall, Economic Policy Institute, How raising the federal minimum wage would help working families and give the economy a boost (Aug. 2012), *available at* http://www.epi.org/publication/ib341-raising-federal-minimum-wage/.

30 Saru Jayaraman, "Why Tipping is Wrong," Oct. 15, 2015, *The New York Times*, *available at* http://www.nytimes.com/2015/10/16/opinion/why-tipping-is-wrong.html?_r=0.

31 Food Labor Research Center et al., Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards (Dec. 2015), *available at* http://rocunited.org/wp2015b/wp-content/uploads/2015/12/WorkingBelowThe-Line_LRR.pdf.

32 William G. Whitaker, Congressional Research Service, The Tip Credit Provisions of the Fair Labor Standards Act (Mar. 2006) at CRS-3. Tipped workers working for chain establishments and retail stores were nevertheless largely exempt from protections under the FLSA originally in that they were not considered to be engaged in interstate commerce. *See* Douglas, Paul H. & Hackman, Joseph. The Fair Labor Standards Act of 1938 II, *Political Science Quarterly*, Vol. 54, No. 1 (Mar. 1939), pp. 29-55.

33 William G. Whitaker, Congressional Research Service, The Tip Credit Provisions of the Fair Labor Standards Act (Mar. 2006) at CRS-3.

34 *Id.* at CRS-5.

35 *Id.* at CRS-6.

36 *See supra* note 3.

37 *See supra* note 5. The following categories of workers were considered "tipped restaurant workers:" Waiters and Waitresses; Bartenders; Dining Room and Cafeteria Attendants and Bartender Helpers; Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop; Counter Attendants, Cafeteria, Food Concession, and Coffee Shop workers; and Food servers, Non-restaurant.

38 *See supra* note 5 (comparing the number of Waiters and Waitresses and Bartenders with the total number working in "customarily tipped occupations").

39 *See supra* note 5 (derived from Median hourly wage listed in downloadable XLS file).

40 *See supra* note 5.

41 Maine's minimum wage has been set at $7.50 per hour since 2009. *See supra* note 8. The tipped minimum wage is Maine is set at 50 percent of the full minimum wage. *See supra* note 4.

42 *See*, *e.g.*, Michelle Corry, "Maine Voices: Minimum-Wage proposal could wipe out margins, put Maine restaurants in peril," Mar. 22, 2016, *Portland Press Herald*, *available at* http://www.pressherald.com/2016/03/22/maine-voices-minimum-wage-proposal-could-wipe-

out-margins-put-restaurants-in-peril/; Heather McIntosh, "Maine Voices: Take it from tipped workers, not their bosses: Increase the minimum wage," Mar. 29, 2016, *Portland Press Herald*, *available at* http://www.pressherald.com/2016/03/29/maine-voices-take-it-from-tipped-workers-not-their-bosses-increase-the-minimum-wage/.

43 *See supra* note 5.

44 *Id.*

45 *See* Economic Policy Institute, Family Budget Calculator, http://www.epi.org/resources/budget/ (last viewed Oct. 6, 2016).

46 *See supra* note 5.

47 Rajesh D. Nayak & Paul K. Sonn, National Employment Law Project, Restoring the Minimum Wage for America's Tipped Workers (Aug. 2009) at 8, *available at* http://nelp.3cdn.net/f6df4ed353601d4c50_x6m6iy650.pdf.

48 *See supra* note 6.

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *See supra* note 13 at 1.

57 *Id.* at 3.

58 *Id.* at 2.

59 *Id.* at 7–8, 25.

60 *Id.* at 27–29.

61 *Id.*

62 *Id.* at 2.

63 *Id.*

64 *Id.* at 20.

65 *Id.* at 29.

66 *Id.*

67 *See supra* note 4.

68 The Maine Department of Labor instructs employers that when the "employer paid wage plus tips do not average at least the minimum wage at the end of the work week, the employer must make up the difference in wages." Maine.gov, State of Maine Department of Labor, Bureau of Labor Standards, Frequently Asked Questions, http://www.maine.gov/labor/labor_laws/faqs.html (last viewed Oct. 6, 2016).

69 *Id.*

70 Maine law permits tip pooling that is consistent with FLSA and regulations made pursuant to that Act. *See supra* note 4.

71 National Employment Law Project, An Order of Fair Pay: How a "Wage Order" Eliminating New York's Sub-Minimum Wage for Tipped Workers Will Deliver Fair Pay for Workers, Women, and the State's Economy (July 2014) at 4, *available at* http://www.nelp.org/content/uploads/2015/03/New-York-Tipped-Minimum-Wage-Order-Report.pdf.

72 *See supra* note 14 at 7.

73 *Id.*

74 *Id.* at 6.

75 Sarah Maslin Nir, "The Price of Nice Nails," May 7, 2015, *The New York Times*, *available at* http://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html?_r=0.

76 *See supra* note 16.

77 *Id.*

78 *See supra* note 17.

79 *See supra* note 18.

80 Steve Ahlquist, "Labor Sec. Perez supports raising min wage, eliminating tipped min wage," Apr. 27, 2015, *RIFuture.org, available* at http://www.rifuture.org/labor-sec-perez-supports-raising-min-wage-eliminating-tipped-min-wage.html.

81 *See supra* note 15 (as of Oct. 6, 2016).

82 *Id.*

83 Michael Lynn & Christopher Boone, Have Minimum Wage Increases Hurt the Restaurant Industry? The Evidence Says No! (2015), Cornell Hospitality Report, *available at* http://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1000&context=chrreports.

84 National Restaurant Association, Restaurant job growth to outpace economy in 2016 (Feb. 10, 2016), http://www.restaurant.org/News-Research/News/Restaurant-job-growth-to-outpace-economy-in-2016.

85 *Id.*

86 *Id.*

87 National Restaurant Association, 2016 Restaurant Industry Forecast, http://www.restaurant.org/News-Research/Research/Forecast-2016 (last viewed Oct. 6, 2016).

88 United States Department of Labor, Wage and Hour Division, Minimum Wage Laws in the States – August 1, 2016, https://www.dol.gov/whd/minwage/america.htm (last viewed Oct. 6, 2016); *see supra* note 1.

89 National Restaurant Association, Projected Restaurant Employment Growth 2016–2026, http://www.restaurant.org/Restaurant/media/Restaurant/SiteImages/News%20and%20Research/Forecast/2016/2016-Employment-Growth-Map.jpg (last viewed Oct. 6, 2016).

90 Oregon Bureau of Labor and Industries, Oregon Minimum Wage Rates, http://www.oregon.gov/boli/TA/docs/oregonminimumwage_eng_2016-07.pdf (last viewed Oct. 6, 2016).

91 *See supra* note 1.

92 *See supra* note 89.

93 *See supra* note 88.

94 Ballotpedia, Washington Minimum Wage Increase, Initiative 1433 (2016), https://ballotpedia.org/Washington_Minimum_Wage_Increase,_Initiative_1433_(2016) (last viewed August 10, 2016).

95 *See supra* note 89.

96 National Restaurant Association, Projected Restaurant Sales Growth in 2016, http://www.restaurant.org/Restaurant/media/Restaurant/SiteImages/News%20and%20Research/Forecast/2016/2016-Sales-Growth-Map.jpg (last viewed Oct. 6, 2016).

97 *Id.*

98 *See supra* note 88.

99 *See supra* note 3.

100 *See supra* note 89.

101 *See supra* note 96.

102 United States Department of Labor, Wage and Hour Division (WHD), Minimum Wages for Tipped Employees – Historical Tables, https://www.dol.gov/whd/state/tippedHistory.htm (last viewed Oct. 6, 2016).

103 Restaurant Opportunities Centers United analysis of employment reports (Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2001–2014) for NAICS 722 Food Services and Drinking Places in Maine, Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington.

104 *Id.*

105 National Restaurant Association, News & Research, State Statistics, http://www.restaurant.org/News-Research/Research/Facts-at-a-Glance/State-Statistics (last viewed Oct. 6, 2016).

106 *Id.*

107 Projected sales per restaurant employee derived by dividing 2016 projected sales by the number of 2015 Eating and Drinking Places Employees. *See supra* note 105.

108 *See supra* note 105.

109 The economic stimulus is calculated by Restaurant Opportunities Centers United by taking the average of: 1.) a high estimate of the increase from the tipped to the full minimum

wage, assuming all restaurant tipped workers earn the tipped minimum wage of $3.75 and other tipped workers earn $5 per hour, times the number of workers in each category, times median hours and weeks worked; and 2.) a low estimate of the increase from the calculated hourly wage when the hourly wage including tips falls below the hourly wage cut-off, times the actual number of workers, hours, and weeks worked as gathered from ACS, 2013, and including a multiplier effect. The economic multiplier is based on the macroeconomic multipliers calculated by Moody's Analytics Chief Economist Mark Zandi, which estimate the one-year dollar change in GDP for a given dollar reduction in federal tax revenue. For the low-wage worker multiplier, we followed a methodology developed by the Economic Policy Institute and averaged Zandi's stimulus multipliers for the Earned Income Tax Credit (within the parameters of the American Recovery and Reinvestment Act) and Making Work Pay (ARRA's refundable tax credit for working individuals and families) for a multiplier of 1.21.

110 *See supra* note 28.

111 Congressional Budget Office, The Budget and Economic Outlook: 2016 to 2026 (Jan. 2016) at 157, Table 2-1, *available at* https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook_OneCol-2.pdf.

112 *See*, *e.g.*, Kal Filion, Economic Policy Institute, Increases in minimum wage boost consumer spending (May 2009), *available at* http://www.epi.org/publication/snapshot_20090527/; Raise the Minimum Wage, Minimum Wage as Economic Stimulus, http://raisetheminimumwage.org/pages/stimulus (last viewed Oct. 6, 2016); Fiscal Policy Institute, New York Economists Support a Statewide $15 Minimum Wage; Recent academic research shows it's good for workers, businesses, and the economy, http://fiscalpolicy.org/new-york-economists-support-a-statewide-15-minimum-wage-recent-academic-research-shows-its-good-for-workers-businesses-and-the-economy (last viewed Oct. 6, 2016).

113 *See* Table 2.

114 Seattle.gov, Office of the Mayor, $15 Minimum Wage, http://murray.seattle.gov/minimumwage/#sthash.wGPyQDaz.dpbs (last viewed Oct. 6, 2016).

115 *Compare* Seattle.gov, City of Seattle Business License Database, List of Top 100 NAICS (North American Industry Classification System) with Descriptions (March 2014), https://web.archive.org/web/20140321225147/http:/www.seattle.gov/licenses/find-a-business *with* Seattle.gov, City of Seattle Business License Database, List of Top 100 NAICS (North American Industry Classification System) with Descriptions (accessed October 2016), http://www.seattle.gov/licenses/find-a-business. Food services and beverage industry licenses include the following categories: Full Service Restaurants; Limited Service Restaurants; Drinking Places; Mobile Food Services; and Snack and Non-Alcoholic Beverage Bars.

116 Jeanine Stewart, "Apocalypse Not: $15 and the cuts that never came," October 23, 2015, *Puget Sound Business Journal*, *available at* http://www.bizjournals.com/seattle/print-edition/2015/10/23/apocolypse-not-15-and-the-cuts-that-never-came.html.

117 Blanca Torres, "A year in, 'the sky is not falling' from Seattle's minimum-wage hike," March 31, 2016, *The Seattle Times, available at* http://www.seattletimes.com/business/economy/a-year-in-the-sky-is-not-falling-from-seattles-minimum-wage-hike/; Jared Bernstein, "So far, the Seattle minimum-wage increase is doing what it's supposed to do," Aug. 10, 2016, *The Washington Post, available at* https://www.washingtonpost.com/posteverything/wp/2016/08/10/so-far-the-seattle-minimum-wage-increase-is-doing-what-its-supposed-to-do/?utm_term=.e26f8b8d0677.

118 Coral Garnick, "Seattle jobless rate hits 8-year low in August," Sept. 16, 2015, *The Seattle Times, available at* http://www.seattletimes.com/business/local-business/state-jobless-rate-stays-steady-at-53-percent-in-august/.

119 *See supra* note 1.

120 *See supra* note 21.

121 Michael Reich et al., Univ. of Calif.-Berkeley, The Economic Effects of a Citywide Minimum Wage (2007), *available at* http://www.irle.berkeley.edu/cwed/wp/economicimpacts_07.pdf.

122 Michael Reich et al., Univ. of Calif. Press, When Mandates Work: Raising Labor Standards at the Local Level (2014) at 31, *available at* http://irle.berkeley.edu/publications/when-mandates-work/; *see also* Susan Berfield, "San Francisco's Higher Minimum Wage Hasn't Hurt the Economy," Jan. 22, 2014, *Bloomberg Business*, *available at* http://www.businessweek.com/articles/2014-01-22/san-franciscos-higher-minimum-wage-hasnt-hurt-the-economy; Carolyn Lochhead, "S.F. praised as model for U.S. on increasing minimum wage," Jan. 28, 2015, *SF Gate, available at* http://www.sfgate.com/politics/article/S-F-praised-as-model-for-U-S-on-increasing-5183378.php.

123 *See*, *e.g.*, Pete Wells, "Danny Meyer Restaurants to Eliminate Tipping," Oct. 14, 2015, *The New York Times, available at* http://www.nytimes.com/2015/10/15/dining/danny-meyer-restaurants-no-tips.html; Bret Thorn & Nancy Kruse, "Is tipping on the way out?," Mar. 1, 2016, *Nation's Restaurant News, available at* http://nrn.com/operations/tipping-way-out; Phil Vettel, "No-tipping policy begins at NYC restaurant and industry is watching," Nov. 20, 2015, *Chicago Tribune, available at* http://www.chicagotribune.com/dining/ct-no-tipping-nyc-restaurant-danny-meyer-20151119-story.html.

124 *See supra* note 20.

125 *See supra* note 21.

126 Sylvia Allegretto & Carl Nadler, Tipped Wage Effects on Earnings and Employment in Full-Service Restaurants, Industrial Relations, Vol. 54, No. 4 (Oct. 2015) at 646, *available at* http://www.irle.berkeley.edu/cwed/allegretto/pubs/AllegrettoNadler.pdf.

127 *See supra* note 11 at 11.

128 *Id.*

129 Quote obtained by the National Employment Law Project.

THE CASE FOR PHASING OUT MAINE'S SUBMINIMUM WAGE FOR TIPPED WORKERS

NELP
NATIONAL EMPLOYMENT LAW PROJECT

ROC United
275 7th Ave, Ste 1703
New York, NY 10001
212.343.1771
rocunited.org